UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1994/9
6 July 1994

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-sixth session
Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

HUMAN RIGHTS AND THE ENVIRONMENT

Final report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur

CONTENTS

	Paragraphs	Page
Introduction	1 - 20	3
A. Origin of the study	8 - 11	4
B. Terms of reference of the Special Rapporteur	12 - 19	5
C. Plan of the study	20	6
Chapter		
I. FROM ENVIRONMENTAL LAW TO THE RIGHT TO A SATISFACTORY ENVIRONMENT: LEGAL FOUNDATIONS	21 - 46	8
A. General provisions	21 - 33	8
B. International human rights instruments	34 - 46	11
II. RIGHT TO DEVELOPMENT, PARTICIPATORY DEMOCRACY AND THE ENVIRONMENT	47 - 73	15
A. Some aspects of the problem	47 - 62	15
B. Right to development; sustainable and environmentally sound development	63 - 66	18
C. Development, participation and the environment	67 - 73	20

GE.94-13205 (E)

CONTENTS (continued)

Chapter		Paragraphs	Page
III.	OTHER ASPECTS OF THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT	74 - 116	22
	A. Indigenous peoples and the environment	74 - 94	22
	B. Protection of the environment in periods of armed conflict	95 - 110	27
	C. The environment, and international peace and security	111 - 116	31
IV.	ENVIRONMENTAL DEGRADATION AND ITS IMPACT ON VULNERABLE GROUPS	117 - 160	33
	A. Overview	117 - 136	33
	B. Vulnerable groups	137 - 160	36
V.	ANALYSIS OF THE EFFECTS OF THE ENVIRONMENT ON THE ENJOYMENT OF FUNDAMENTAL RIGHTS	161 - 234	42
	A. Right to self-determination and permanent sovereignty over natural resources	163 - 171	42
	B. Right to life	172 - 175	44
	C. Right to health	176 - 187	46
	D. Right to food	188 - 191	48
	E. Right to safe and healthy working conditions	192 - 194	48
	F. Right to housing	195 - 202	49
	G. Right to information	203 - 216	50
	H. Popular participation	217 - 223	53
	I. Freedom of association	224 - 225	55
	J. Cultural rights	226 - 234	55
VI.	CONCLUSIONS AND RECOMMENDATIONS	235 - 261	58
	A. Conclusions	235 - 257	58
	B. Recommendations	258 - 261	62

ANNEXES:

I.	Draft principles on human rights and the environment	74
II.	Meetings with, and contributions of, experts and non-governmental organizations	78
III.	Developments in national legislation and practices	81

INTRODUCTION

1. The environment, development, democracy, human rights: these are the key issues which characterize the close of this century and pose a continuing challenge to the establishment of an order in which, in conformity with the Universal Declaration of Human Rights, the rights set out therein can be fully realized. Revolt against oppression, the quest for justice, the search for progress and the pursuit of development are fundamental concerns of mankind. They were apparent in the acts of the Founder and King of Babylon, Hammurabi, who, 16 centuries before Jesus Christ, sought to bring in the reign of justice to protect the weak from being wronged. They also emerge from the thoughts of the Confucian Meng-tzu who, 300 years before Jesus Christ, asserted: "The individual is infinitely important; what matters least is the person of the sovereign". They also mark Antigone's act of revolt when she invoked her right to disobedience in order to transgress the orders of the King, and Spartacus' courage when he led the slaves to break their chains.

2. When, on 10 December 1948, the international community solemnly proclaimed the Universal Declaration of Human Rights, it acknowledged the dynamics of the triptych of oppression-revolt-repression, and underscored in two essential preambular paragraphs that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people" and that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

3. The Universal Declaration also underscores the full importance of the legal expression of human rights and of establishing a legal framework that provides effective remedies. The protection of human rights by the rule of law indeed remains one of the means of democratic expression of claims, within a structured framework that guarantees legal action while fostering dialogue.

4. For the particular purposes of this study of human rights and the environment, it is equally important to establish the legal framework for pursuing what have become the essential demands of this century, in order to take up the legitimate concerns of our generation, to preserve the interests of future generations and mutually to agree upon the components of a right to a healthy and flourishing environment.

5. The Special Rapporteur remains convinced that providing the various agents and beneficiaries of this evolving right with the legal framework and means of expression, communication, participation and action will reinforce the channels for dialogue, discussion and cooperation nationally, regionally and internationally, thereby making it possible to define the mutually agreed component of this right as well as its harmonious application, in conformity with the universally recognized fundamental principles of human rights. Human rights would thereby gain a new dimension. In addition, they should make it possible to go beyond reductionist concepts of "mankind first" or "ecology first" and achieve a coalescence of the common objectives of development and environmental protection. This would signify a return to the principal

objective that inspired the Universal Declaration of Human Rights, whose article 28 states: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

6. For many years environmental problems were almost exclusively considered from the standpoint of the pollution in one part of the world, i.e. the industrialized countries. 1/ Acknowledgement of the link between the environment and human rights was fostered by an awareness of the global, complex, serious and multidimensional nature of environmental problems. Moreover, attention is being focused more and more on environmental deterioration wherever it occurs, on understanding its causes and on examining its repercussions and the risks involved.

7. This new attitude has the virtue of going beyond the limited framework and narrow vision that previously circumscribed environmental problems, and it tackles the issue from a universal angle, involving a global economic, social and cultural approach to which it adds the human dimension (the human right to a healthy and balanced environment and to "sustainable development"). 2/

A. Origin of the study

8. In decision 1989/108 dated 31 August 1989, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities asked Mrs. Fatma Zohra Ksentini to prepare a concise note setting forth methods by which a study could be made of the problem of the environment and its relation to human rights. The above decision also indicates that the information on human rights and the environment provided to the Sub-Commission at its forty-first session by Friends of the Earth, the Sierra Club Legal Defense Fund, Inc. and the Association of Humanitarian Lawyers, and by certain members, together with the Environmental Perspective to the Year 2000 and Beyond (General Assembly resolution 42/186, dated 11 December 1987) justified the Sub-Commission's consideration of this issue.

9. On 6 March 1990 the Commission on Human Rights adopted resolution 1990/41, entitled "Human rights and the environment", in which it underscored the link between the preservation of the environment and the promotion of human rights and welcomed the decision of the Sub-Commission to have a note prepared for its forty-second session on methods by which a study on the problems of the environment and its relation to human rights could be made.

10. Although this is the first time the Sub-Commission has considered environmental problems as a whole and in relation to human rights, it has already dealt with some aspects of the problem, such as the movement and dumping of toxic and dangerous products and wastes (resolution 1988/26, dated 1 September 1988). 3/

11. Debates within the Sub-Commission and the Commission, together with written observations submitted to the Special Rapporteur pursuant to resolution 1989/108, have focused on the following points:

(a) A universal awareness of the scale, seriousness and complexity of environmental problems;

(b) The need for appropriate national, regional and international measures to address such problems;

(c) The close link between the environment and human rights. Some human rights violations are allegedly the causes of or factors in environmental degradation; moreover, deterioration of the environment affects the enjoyment of human rights (life, health, work, information, participation, self-determination, the right to development, to peace and security, and so on);

(d) Specific regional and other development projects were advanced as illustrations of environmental degradation and infringement of human rights;

(e) The Sub-Commission and the Commission on Human Rights should focus greater attention on the environmental problems that affect human rights.

B. Terms of reference of the Special Rapporteur

12. In response to the requests of the Sub-Commission and the Commission, Mrs. Ksentini submitted a note to the Sub-Commission at its forty-second session containing a number of proposals for a study of the environment and its relation to human rights (A/CN.4/Sub.2/1990/12). After examining the note, the Sub-Commission adopted resolution 1990/7 on 30 August 1990 requesting the Special Rapporteur to submit a preliminary report to it at its forty-third session. That request was approved by the Commission on Human Rights, in resolution 1991/44 dated 5 March 1991, and by the Economic and Social Council, in decision 1991/244 dated 31 May 1991. The Sub-Commission, after considering the preliminary report (E/CN.4/Sub.2/1991/8), adopted resolution 1991/24 dated 29 August 1991, whereby it requested the Special Rapporteur to submit a progress report. The Commission on Human Rights in decision 1992/110 dated 28 February 1992, and the Economic and Social Council, in decision 1992/252 dated 29 July 1992, endorsed this request.

13. The Sub-Commission examined the progress report (E/CN.4/Sub.2/1992/7 and Add.1) containing an analysis of national and international provisions and the decisions and comments of human rights bodies relating to human rights and the environment as well as information on the results of the United Nations Conference on Environment and Development held in Rio de Janeiro from 3 to 14 June 1992, in which the Special Rapporteur participated as an observer.

14. In resolution 1992/31 dated 27 August 1992, the Sub-Commission took note with appreciation of the progress report and requested the Special Rapporteur to continue her study and to submit to the Sub-Commission at its forty-fifth session a second progress report containing additional information and an analysis of decisions and views of international human rights organs and other relevant organs, as well as information on and an analysis of national laws and practice. The Commission on Human Rights endorsed this request in decision 1993/144 dated 10 March 1993.

15. The Special Rapporteur submitted her second progress report (E/CN.4/Sub.2/1993/7) in which she reviews developments in regard to the recognition and implementation of environmental rights as human rights on the basis of the standards and practices developed at the national, regional and universal levels. The report contains preliminary recommendations with a view to the submission of conclusions and final recommendations to the Sub-Commission at its forty-sixth session, in conformity with paragraph 3 of resolution 1992/31 of the Sub-Commission.

16. On the basis of the terms of reference defined by the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Special Rapporteur submits her final report, together with recommendations and guidelines, in conformity with Sub-Commission resolution 1993/32 dated 25 August 1993, and Commission resolution 1994/65 dated 9 March 1994.

17. The Special Rapporteur wishes to express her gratitude to the members of the Sub-Commission, States, United Nations organs, specialized agencies and non-governmental organizations for the information with which they have provided her and for the advice they have given. 4/ She wishes to mention, in particular, the support given by the Sierra Club Legal Defense Fund, Inc., which has committed itself totally to this study and provided valuable assistance in organizing international meetings, including a seminar in Geneva from 15 to 19 May 1994, for the purpose of drawing up the guiding principles annexed to this report. She also wishes to thank the participants whose presence and expertise enabled her to improve the text submitted in the form of "draft principles on human rights and the environment".

18. Throughout the period of her mandate, the Special Rapporteur has received communications from Governments and non-governmental organizations drawing her attention to specific situations. As a rule she has used them as a source for identifying emerging trends, their use being restricted to the thematic aspects of the study for which she was responsible.

19. As the study concerns human rights and the environment, the Special Rapporteur's main concern has been to bring out those aspects of the environment that affect the enjoyment of human rights. As a result, the sources drawn on in preparing this report have essentially been the relevant international human rights instruments and the legislation and practices developed in this area nationally, regionally and universally. In this respect, the replies of Governments and intergovernmental and non-governmental organizations have proved very useful, as have the Special Rapporteur's consultations with representatives of Governments, international agencies, human rights bodies and non-governmental organizations, and with representatives of indigenous peoples.

C. Plan of the study

20. With these considerations in mind, this study will comprise six chapters. Chapter I is devoted to the legal foundations of the right to the environment. Chapter II addresses the specific relationship between development and the

environment. Chapter III concerns other aspects of the relationship between human rights and the environment. Chapters IV and V analyse the impact of the environment on vulnerable groups and on the enjoyment of fundamental rights. In chapter VI, the Special Rapporteur sets out her conclusions and recommendations. The annexes contain a draft declaration of principles on human rights and the environment, an overview of consultations with non-governmental organizations and a summary of national legislation and practices compiled by the Special Rapporteur, essentially on the basis of replies by Governments.

CHAPTER I. FROM ENVIRONMENTAL LAW TO THE RIGHT TO A SATISFACTORY ENVIRONMENT: LEGAL FOUNDATIONS

A. General provisions

21. Environmental protection is not solely a concern of this day and age; this moral principle may be found in the precepts of Islam. Ibn Jarir al-Tabari narrates the recommendations of the first Caliph, Abu Bakr as-Siddiq, to the commander of the Arab armies, Ussama Ibn Zeid, who led an expedition towards the "Sham" (Syria):

> "Remember that you are always under the eye of God, behave like men, do not run away, nor let the blood of women or children and old people stain your victory. Do not destroy palm trees, do not burn houses or fields of wheat, never cut down fruit trees and kill cattle only when you need to eat it. When you sign a treaty, make sure you respect its clauses. As you advance, you will meet men of faith living in monasteries and who serve God through prayer; leave them alone, do not kill them and do not destroy their monasteries".

22. International environmental regulations, which emerged from a worldwide movement and a collective realization of the dangers threatening our planet and the future of mankind, were initially sectoral and essentially envisaged within the traditional framework of inter-State relations; they have finally attained a global dimension, which has made possible the shift from environmental law to the right to a healthy and decent environment.

23. The qualitative leap taken at the United Nations Conference on the Human Environment (Stockholm, 5-16 June 1972) was preceded by sectoral regulations dating back to the turn of the century with the drafting of the Paris International Convention for the Protection of Birds useful to Agriculture. The obligation to protect the environment during armed conflict is considered to derive from the customary norms of international humanitarian law, and in particular the St. Petersburg Declaration of 1868, which laid down restrictions on methods of conducting hostilities by asserting that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military force of the enemy".

24. International environmental law has developed to such an extent that there are some 350 multilateral treaties, 1,000 bilateral treaties and a multitude of instruments of intergovernmental organizations that have been adopted in the form of declarations, programmes of action and resolutions. International regulations initially focused on combating maritime, river and air pollution and radioactivity. The latter is illustrated by the Treaty of Moscow of 5 August 1963 Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, the Antarctic Treaty, signed in Washington on 1 December 1959, and the conventions and standards drawn up under the aegis of International Atomic Energy Authority to safeguard against the risks of irradiation and to ensure the physical protection of nuclear material.

25. Regulation of global transboundary pollution has made it possible to define a range of relevant principles which, according to Michel Prieur, "may be considered as binding upon States". 5/ In this respect he cites the following principles:

> Before engaging in any activity that may have perceptible effects on the environment of another State, the State under whose jurisdiction or control the activity is to take place must assess its consequences;
>
> It must inform the other State and transmit to it relevant details of the project, provided they constitute information and data whose transmission is not prohibited by national legislation or by relevant international treaties;
>
> In the case of activities liable to damage the environment of another State, it must consult the State concerned if the latter so requests;
>
> States must urgently inform the other States likely to be affected, cooperate by providing mutual assistance in order to take the necessary preventive measures and, where necessary, eliminate, mitigate or repair the environmentally harmful consequences;
>
> If the activities that take place within the jurisdiction or under the control of a State damage, or are liable to damage, the environment of another State, the latter's residents who are affected or liable to be affected by them must be able to have access to the administrative and judicial procedures of the State in which the environmental damage originates, on the same conditions as residents of that State. If persons living abroad have already suffered damage, the same remedies must be available to them as to residents. During these procedures, non-residents must receive the same treatment as residents;
>
> A State must not discriminate in its legislation or in the application of that legislation on the basis of the location of the environmentally harmful effects, by applying less stringent rules to activities whose adverse environmental effects are felt beyond its frontiers.

26. As early as 1968, in resolution 2398 (XXII) dated 3 December 1968, the General Assembly underscored the consequent effects of impairment of the quality of the human environment on the condition of man and on his enjoyment of basic human rights. In the same year, the Proclamation of Tehran drew attention to the fact that, while recent scientific discoveries and technological advances had opened vast prospects for economic, social and cultural progress, such developments might nevertheless endanger the rights and freedoms of individuals and would require continuing attention (A/CONF.32/41, Proclamation, para. 18). The Stockholm Declaration of 1972 went on to recognize the relationship between the environment, man and his basic rights, even the right to life itself.

27. The Declaration of the 1972 United Nations Conference on the Human Environment 6/ contains, in addition to its 26 principles, an Action Plan for the Human Environment, which made possible the establishment of the United Nations Environment Programme, decided upon by the

General Assembly. 7/ Although it is not mandatory, the Stockholm Declaration none the less represents a set of values whose fundamental nature is acknowledged by the international community. The Declaration proclaims that "man is both creature and moulder of his environment" and that "Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself". The question of environmental protection and improvement is described as "a major issue which affects the well-being of peoples and economic development throughout the world ... and the duty of all Governments". The Declaration recognizes that "In the developing countries most of the environmental problems are caused by underdevelopment. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation". The Declaration also recognizes that "To defend and improve the human environment for present and future generations has become an imperative goal for mankind - a goal to be pursued together with" the achievement of the goals of peace and development.

28. Noteworthy among the essential principles defined by the Stockholm Declaration is principle 21, in accordance with which:

> "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

29. The concept of the international responsibility of States implied by this principle is also present in principle 12 of the decision adopted on 19 May 1978 by the Governing Council of the United Nations Environment Programme concerning shared natural resources. It is also evident, in the provisions of the Charter of Economic Rights and Duties of States, 8/ which asserts the sovereign right of States over their wealth and natural resources, while affirming their responsibility to protect and preserve the environment for present and future generations. The Charter also emphasizes the special responsibility of occupying Powers over territories under their domination and the obligation to preserve such territories from the plundering of their natural resources.

30. Principle 1 of the Stockholm Declaration is also noteworthy. It states:

> "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated".

31. The relationships established by the Stockholm Declaration between the environment, development, satisfactory living conditions, dignity, well-being and individual rights, including the right to life, constitute recognition of

the right to a healthy and decent environment, which is inextricably linked, both individually and collectively, to universally recognized fundamental human rights standards and principles, and which may be demanded as such by their beneficiaries, i.e. individuals alone or in association with others, communities, associations and other components of civil society, as well as peoples.

32. Many documents have since been adopted by international, regional and national bodies to strengthen the notion of the right to the environment and underscore its interdependence with other human rights (the Declaration on Social Progress and Development adopted in General Assembly resolution 2542 (XXIV), dated 11 December 1969 the Charter of Economic Rights and Duties of States; 9/ United Nations environmental programmes, including resolution 42/186, dated 11 December 1987, relating to the Environmental Perspective to the Year 2000 and Beyond; 10/ General Assembly resolution 37/7, dated 28 October 1982, proclaiming the World Charter for Nature).

33. The World Charter for Nature proclaims 24 principles of conservation "by which all human conduct affecting nature is to be guided and judged", with as its basic precept the idea that "nature shall be respected and its essential processes shall not be impaired". Particular attention should be drawn to the following principles, which are directly linked to the rights set out in the international human rights instruments (right to health, to well-being, to an education, to participate in decision-making).

> Principle 11, which concerns in particular the control of activities which might have an impact on nature, assessment of their consequences and environmental impact studies of development projects, and the rehabilitation of degraded areas for purposes in accord with their natural potential and compatible with the well-being of affected populations;
>
> Principle 15, relating to broad dissemination of knowledge of nature, particularly by "ecological education as an integral part of general education";
>
> Principle 23, which recognizes that "All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation";
>
> Principle 24, pursuant to which "each person has a duty to act in accordance with the provisions" of the Charter and each person "acting individually, in association with others or through participation in the political process ... shall strive to ensure that the objectives and requirements" of the Charter are met.

B. International human rights instruments

34. International human rights instruments contain few specific provisions relating to the environment. The Universal Declaration of Human Rights

recognizes that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". It is generally accepted that the "order" to which the Declaration refers also covers the environmental concerns of this day and age.

35. In article 24, the African Charter on Human and Peoples' Rights states that "All people shall have the right to a general satisfactory environment favourable to their development".

36. The Additional Protocol to the American Convention on Human Rights (San José, 1969), which relates to economic, social and cultural rights, adopted at San Salvador in 1988, contains a clause concerning the right to an environment. Article 11 provides that everyone shall have the right to live in a healthy environment and to have access to basic public services; the States parties are required to promote the protection, preservation and improvement of the environment.

37. The Convention on the Rights of the Child, dated 20 November 1989, explicitly refers to the need for the education of the child to be directed, inter alia, to "the development of respect for the natural environment" (art. 29, para. (e)). Moreover, as with most other instruments, many of its provisions are intended to be implemented from an ecological standpoint, bearing in mind the relationship between the environment, development and human rights (see para. 31 above).

38. These links are even more apparent where children are concerned in view of their vulnerability. From this standpoint, the following articles cannot be dissociated from environmental considerations: article 6 (inherent right of a child to life, survival and development); article 11 (protection against transfer); articles 12, 13, 14 and 15 (freedom of opinion, expression, thought and association); article 16 (protection of privacy and against arbitrary or unlawful interference [cf. case law of the European Court of Human Rights relating to infringements of privacy]); articles 17 and 29 on the role of the media, information and education; article 19 concerning protection against all forms of violence, abandonment, neglect, ill-treatment (cf. in this connection the phenomenon of urban growth and its effects on the well-being of children; the problems of abandoned children and street children); article 22 on refugee children (bearing in mind the concept of environmental refugees); article 24 on the right to health, including preventive health care; article 27 on the right of every child to a standard of living adequate for his or her physical, mental, spiritual, moral and social development; article 30 on the protection of the rights of indigenous children or children belonging to minorities.

39. The same is true of the other international human rights instruments. Without claiming to provide an exhaustive list, the way in which these instruments should be implemented from an ecological standpoint may be illustrated by the following examples.

(a) Universal Declaration of Human Rights

40. In addition to article 28, referred to above, the fifth preambular paragraph (worth of the human person; social progress; better standard of life); article 22 ("Everyone ... is entitled to realization ... of the

economic, social and cultural rights indispensable for his dignity and the free development of his personality"); article 24 (right to rest and leisure); article 25 (right to an adequate standard of living).

(b) Proclamation of Tehran

41. Article 18 calls for vigilance concerning scientific discoveries and technological advances which, although they have opened vast prospects for economic, social and cultural progress, may nevertheless endanger the rights and freedoms of individuals.

(c) International Covenant on Economic, Social and Cultural Rights

42. Article 1 (right of peoples to self-determination and to freely dispose of their natural wealth and resources), article 7 (a decent living, safe and healthy working conditions, rest and leisure), article 11 (right to an adequate standard of living, and to be free from hunger; programmes to improve methods of production, conservation and distribution of food; disseminating knowledge of principles of nutrition; measures to achieve the most efficient development and utilization of natural resources; equitable distribution of world food supplies), article 12 (right to health; steps to be taken for the healthy development of the child, improvement of all aspects of environmental and industrial hygiene), article 15 (right to enjoy the benefits of scientific progress and its applications).

(d) International Covenant on Civil and Political Rights

43. Article 1 (right of peoples to self-determination and to freely dispose of their natural wealth and resources), article 6 (right to life), article 7 (prohibition of cruel, inhuman or degrading treatment or punishment, medical or scientific experimentation without the consent of the person concerned), article 17 (arbitrary or unlawful interference with privacy or the family) and article 20 (prohibition of propaganda for war).

(e) International Convention on the Elimination of All Forms of Racial Discrimination

44. The flagrant discrimination to which marginalized persons, vulnerable groups, minorities and indigenous peoples are subjected vis-à-vis ecological risks, raises sharply the issue of the effective implementation of the basic principle of non-discrimination set out in the Convention, and that of the practical implementation of all the provisions of the Convention on behalf of disadvantaged individuals and groups (and more particularly article 5 on the right to equal treatment before the tribunals, the right to security of person, political and civil rights, economic, social and cultural rights, the right of access to any place or service intended for use by the general public, and article 6 on the right to effective protection and remedies).

(g) Convention on the Elimination of All Forms of Discrimination against Women

45. The observations concerning the Convention referred to above are also valid for this Convention. The Special Rapporteur further wishes to stress

the basic role played by women in promoting economic, social, cultural and political activities for sustainable development. She would therefore emphasize the importance of the participatory role of women and the particular value of the following provisions of the Convention on the Elimination of All Forms of Discrimination against Women: article 5 on measures to be taken to modify adverse social and cultural patterns of conduct of men and women; article 7 on participation in political and public life, particularly the right to vote and to stand for election, the right to participate in the formulation of government policy and the implementation thereof, and the right of participation and association; article 10 on the right of equal access to education; article 11 on the right to work; article 12 on the right to health and to appropriate services during and after pregnancy (with regard to this latter point, environmental factors have a decisive effect on pregnant women, embryos and young children); article 14 on the specific protection of rural women and the efforts to be made to ensure their full participation in the elaboration and implementation of development planning and in its benefits.

(e) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

46. The Convention rightly stresses "the situation of vulnerability in which migrant workers and members of their families frequently find themselves", as well as the need to ensure the international protection of their rights, which should be implemented on the basis of the principle of non-discrimination. The observations concerning the International Convention on the Elimination of All Forms of Racial Discrimination are valid for this Convention also, but the situation of vulnerability mentioned above must be kept in mind.

CHAPTER II. RIGHT TO DEVELOPMENT, PARTICIPATORY DEMOCRACY AND THE ENVIRONMENT

A. Some aspects of the problem

1. Indivisibility and interdependence of all human rights

47. The close relationship which exists between development - recognized as a human right by several international texts, including the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 - and the environment throws into relief the indivisible and interdependent nature of all human rights. The idea of indivisibility has already been emphasized by the Proclamation of Tehran of 13 May 1968, which states in paragraph 13 that:

> "Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development".

48. General Assembly resolution 32/130 of 16 December 1977 and the subsequent resolutions on "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms" share the objective of "reconciling" different generations of rights and rehabilitating economic, social and cultural rights. This task of reconciliation was to be completed by the Declaration on the Right to Development, which reaffirms in the preamble the principle already embodied in the Universal Declaration of Human Rights of 1948 that:

> "everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized".

In article 6 the Declaration on the Right to Development states unequivocally that "All human rights and fundamental freedoms are indivisible and interdependent" and that they should receive equal attention and urgent consideration. Furthermore, the Declaration passes over neither the internal nor the external factors impeding the realization of the right to development (denial of civil, political, economic, social and cultural rights; inappropriate development policies; unfavourable national and international conditions; need to establish a new international economic order, to realize the right of peoples to self-determination and enable them to exercise their inalienable rights to full sovereignty over all their natural wealth and resources; primary responsibility of States for the creation of national and international conditions favourable to the realization of the right to development, and so on).

49. Underlying the links between the right to development and the right to the environment is the notion of the indivisibility and interdependence of all human rights, whether civil or political, economic, social or cultural. Moreover, it is impossible to separate the claim to the right to a healthy and

balanced environment from the claim to the right to "sustainable" development, which implies a concentration of efforts to combat poverty and underdevelopment.

2. Poverty, underdevelopment, environmental degradation and enjoyment of human rights

50. The Stockholm Declaration of 1972 affirms the inextricable link that exists not only between the environment and human rights (right to freedom, equality and dignity) but also between the environment and the right to development (right to live under adequate conditions and in an environment of a quality that permits a life of well-being and dignity).

51. For its part, the World Commission on Environment and Development, established by the General Assembly in 1983, submitted a report in 1987 11/ which is a veritable plea for "sustainable development". The World Commission analysed the crises besetting certain regions of the world and emphasized the interaction of the economy and the environment, of national development policies but also of the world economic system which takes from a poor continent more than it gives to it. The Commission points out that "Debts that they cannot pay force African nations relying on commodity sales to overuse their fragile soils, thus turning good land to desert" (Introduction, para. 19). "As a consequence of the 'debt crisis' of Latin America, that continent's natural resources are now being used not for development but to meet financial obligations to creditors abroad. This approach to the debt problem is short-sighted from several standpoints: economic, political, and environmental. It requires relatively poor countries simultaneously to accept growing poverty while exporting growing amounts of scarce resources" (Introduction, para. 20).

52. It is now widely recognized and acknowledged that poverty and underdevelopment have an adverse effect that causes serious damage to the environment and everywhere impedes realization of the right to development and of other fundamental rights of the individual and of peoples. This cause-and-effect relationship has been demonstrated in many studies. Thus the South Commission, in its report "The Challenge to the South", 12/ affirms that "The North, with its lifestyle conducive to waste, is mainly responsible for the degradation of the environment. But poverty too makes a heavy contribution to that degradation, and an effective strategy designed to eliminate poverty ultimately serves to protect the environment". The South Commission also analyses some aspects of national development strategies which, when they are inappropriate, inadequate, unsuitable or socially ill-oriented, carry great risks to the environment. By way of illustration, the South Commission argues that the absence of social services in rural areas speeds up the flight to the towns, to which the poor inhabitants emigrate in search of a better level of living (education, health, plumbing, water and well-being). This influx increases the pressure on urban social services and worsens the overpopulation of the towns. The South Commission concludes that the result is chaos and a sordid environment in the towns and desertion of the countryside, and that the only way to break out of this vicious circle is by improving education, health services, water supply and hygiene in rural areas.

53. The data on the extent of poverty given in the preliminary report (E/CN.4/Sub.2/1991/8) have not basically changed. As can be seen from the World Bank's "World Development Report 1992", 1 billion people lack an adequate water supply, and about 1.7 billion people do not have adequate sanitation facilities. 13/ UNDP's "Human Development Report 1993" states that in the developing countries some 800 million people still do not get enough food; nearly 1 billion people - 35 per cent of the adult population - are still illiterate; about one third of the world's total population, or 1.3 billion people, are in absolute poverty; about 17 million people die every year from infectious and parasitic diseases; approximately 95 per cent of the 10-12 million HIV-infected people are in the developing world; each day, 34,000 young children still die from malnutrition and disease; two thirds of illiterates are women; internal conflicts affect some 60 countries, and about 35 million people are refugees or internally displaced; more than 850 million people live in areas that are suffering from desertification. 14/

54. It is impossible to draw up an exhaustive or final balance sheet showing the effect of environmental degradation on human rights the enjoyment of which is already very much affected by underdevelopment and poverty (intolerable infant mortality and undernourishment; illiteracy; lack of primary health care and of social services; precarious housing; marginalization of the underprivileged strata, or even racism and discrimination; non-participation in the conduct of public affairs and in the country's political, economic and cultural decision-making, and so on). It is easy to see, however, that the poor populations, the underprivileged strata, the minority groups and others are the most affected in that they are more vulnerable to ecological risks and repercussions (absence of legal and material means of protection; lack of access to information; lack of suitable care, etc.). Furthermore poverty, underdevelopment and marginalization reduce the prospects of economic, social and cultural integration or reintegration of the victims. Those victims find themselves in a vicious circle which includes a series of violations of human rights: assaults on life and health; degradation of living conditions and disintegration of the family unit; unemployment; emigration, exodus, resettlement and even forced migrations which lead to further violations of human rights (racism; discrimination; xenophobia; acculturation; violations of dignity and arbitrary detention; refoulement; marginalization; precarious living and housing conditions; prostitution; drugs; street children, etc.).

3. The external factors

55. The structure of international relations, and more particularly the burden of debt and the impact of structural adjustment measures on the least favoured categories, may constitute serious impediments to the achievement of sustainable development.

56. The Brundtland report referred to above had already noted that:

> "A mainspring of economic growth is new technology, and while this technology offers the potential for slowing the dangerously rapid consumption of finite resources, it also entails high risks, including new forms of pollution and the introduction to the planet of new variations of life forms that could change evolutionary pathways. Meanwhile, the industries most heavily reliant on environmental resources

and most heavily polluting are growing most rapidly in the developing world, where there is both more urgency for growth and less capacity to minimize damaging side effects" (Introduction, para. 14).

57. There is indeed a considerable risk that the developing countries, ill-informed as they are or pursuing growth at all costs, will become the outfall of the polluting industries which the North, alerted or impelled by well-informed public opinion, wishes to remove from its own doorstep.

58. One author, analysing the combined effect of certain development policies on the environment, noted that "today it is widely acknowledged that certain international policies in the fields of investment, trade and aid may have harmful effects on environmental conditions. The conditions laid down by IMF, for example, may give rise to policies that generate practices that in their turn cause the destruction of the environment. The imposition of extensive agricultural production on marginal land, with the aim of increasing a given country's exports and improving its balance of payments, may have catastrophic results." 15/

59. The Special Rapporteur of the Sub-Commission on the question of the realization of economic, social and cultural rights notes for his part that "structural adjustment package policies, which invariably include increasing exports, often result in the overexploitation of natural resources, which counteracts governmental attempts to solve environmental problems." 16/ The author goes on to make an exhaustive analysis of the effects of adjustment on the exercise of economic, social and cultural rights. 17/

60. The developing countries' debt now exceeds 1,500 billion United States dollars. It is agreed by various sources that the debt crisis has brought with it an unprecedented reverse flow of capital from the countries of the third world to the developed countries. The countries of the South are estimated to have paid some 500 billion dollars to the North between 1982 and 1990.

61. According to the European Network on Debt and Development (EURODAD), the reimbursement of the debt should not take priority over the fundamental rights of the populations of debtor countries to food, housing, clothes, work, health services, and a healthy and viable environment. Each country should have access to sufficient resources to permit sustainable and sustained development and growth. 18/

62. The Global Consultation on the Right to Development as a Human Right for its part noted that "Transfer of control of resources located in developing countries to interests in developed countries, which intensified in the 1980s, is another obstacle to development. Similarly, the growing burden of indebtedness and structural adjustment falls heaviest on the poorest and weakest sectors of society and has clear human rights implications." 19/

B. Right to development; sustainable and environmentally sound development

63. Awareness of the major challenges emerging both as regards development and with reference to the environment has made possible a consensus on the

concept of "sustainable and environmentally sound development" which the "Earth Summit", meeting in Rio in 1992, endeavoured to focus by defining an ambitious programme of action, Agenda 21, clarified by a Declaration of 27 principles solemnly adopted on that occasion. The Special Rapporteur does not intend to revert to the results of this Conference, which she outlined in her earlier reports. 20/ However, she wishes to refer to the features which seem to her to underlie the consensual approach to environmental problems.

64. Reference should be made at this point to the content of the Declaration on International Economic Cooperation adopted by the General Assembly in May 1990, in particular the "Revitalization of economic growth and development of the developing countries", which pays ample heed to the environment, thus forging an inseparable link between development and the environment. The Declaration recognizes that "Economic development must be environmentally sound and sustainable," (para. 16) and notes that "The current threat to the environment is the common concern of all. All countries should take effective actions for the protection and enhancement of the environment in accordance with their respective capacities and responsibilities and taking into account the specific needs of developing countries. As the major sources of pollution, the developed countries have the main responsibility for taking appropriate measures urgently. The economic growth and development of developing countries are essential in order to address problems of the degradation and protection of the environment. New and additional financial resources will have to be channelled to developing countries," (para. 29).

65. One should in this respect bear in mind the premises, defined by the General Assembly in resolution 44/228 of 22 December 1989, premises which, according to the Secretary-General, "were accepted when the nations of the world called for the United Nations Conference on Environment and Development". 21/ It will be noted in particular that this resolution stresses that the major cause of the deterioration of the environment is the "pattern of production and consumption, particularly in the industrialized countries" and that "the responsibility for containing, reducing and eliminating the global environmental damage must be borne by the countries causing such damage". It recognizes that "new and additional financial resources will have to be channelled to developing countries in order to ensure their full participation in global efforts for environmental protection". It was also decided to examine "environmental degradation and the international economic environment... without introducing new forms of conditionality". The examination of strategies for national and international action conducive to "sustained and environmentally sound development" should take place "bearing in mind that the incorporation of environmental concerns and considerations in development planning and policies should not be used to introduce new forms of conditionality in aid or in development financing and should not serve as a pretext for creating unjustified barriers to trade".

66. The Agenda 21 programme is considered as giving expression to the now accepted principle whereby responsibilities are shared but separate, in accordance with the similarly accepted principle that the polluter pays - reaffirmed in Principle 16 of the Declaration of Rio, on the basis of the idea that "the polluter should, in principle, bear the cost of pollution", and establishing a global partnership on a new and equitable basis. In this

context, "environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it" (Principle 4), while the eradication of poverty is "an indispensable requirement for sustainable development" (Principle 5). The "common but differentiated responsibilities" of States imply acknowledgement of the responsibility the developed countries bear "in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command" (Principle 7). In addition to the principle enshrined in the Declaration, the United Nations Conference on Environment and Development agreed on the need to support and complement the efforts of developing countries and recognized that the implementation of the Agenda 21 programmes would require providing developing countries with substantial new and additional financial resources. The Conference also recognized the importance of achieving during solutions to the debt problem.

C. Development, participation and the environment

67. The idea of partnership, initiated by the Earth Summit, is also based on the notion of participatory democracy at all levels, nationally and internationally. It thus ties in with the principle contained in article 1, paragraph 1, of the Declaration on the Right to Development that the right to development is also "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

68. A development strategy which did not take into account the human, social and cultural dimension could have only adverse repercussions on the environment. It was emphasized in particular at the Global Consultation on the Right to Development as a Human Right that "What constitutes 'development' is largely subjective, and in this respect development strategies must be determined by the people themselves and adapted to their particular conditions and needs".

69. Failure to take part in decision-making, whether internationally or nationally, has been and still is at the origin of development choices or the imposition of development strategies which have had serious adverse effects on the environment. In this respect, the internal and external factors affecting the realization of the right to development are so many elements affecting the realization of the right to the environment. It may thus be said that a national development strategy is viable from the economic, social and ecological standpoint only if it gains the active adherence of the various social strata of the population. Such adherence cannot be gained on the basis of denying the rights of the human person, whether civil and political or social, cultural and economic (discrimination, racism, slavery, servitude, forced migration; freedom of thought, information, participation, association and expression; the right to work, to health, to an adequate level of living and to fair remuneration; cultural rights, etc.). Such adherence will also be lacking if the development model recommended is incompatible with the fundamental socio-cultural characteristics of the populations concerned. In this context attention should be drawn to some conclusions reached at the Global Consultation on the Right to Development as a Human Right, which acknowledged that:

"Development strategies which have been oriented merely towards economic growth and financial considerations have failed to a large extent to achieve social justice; human rights have been infringed, directly and through the depersonalization of social relations, the breakdown of families and communities, and of social and economic life" (para. 153).

70. The right to participation has both individual and collective dimensions; it covers economic, social, cultural and political aspects which give full meaning to the concept of democracy. Without going back to the fruitful discussions on this issue, the Special Rapporteur wishes to emphasize the full importance of the concept, of participatory democracy in the context of the environment, without which the concept of sustainable development would be totally without substance.

71. The United Nations Conference on Environment and Development had the merit of stressing the importance of this participation by including it in various solemnly adopted principles (see in particular Principle 10 of the Declaration of Rio on the participation of citizens, Principle 20 on the participation of women, or Principle 22 on the participation of indigenous people and their communities). Moreover, the underlying principle of the implementation of Agenda 21 is the adequate reinforcement of the role which the main groups are required to play. A whole section is devoted to this issue. The Conference was of the opinion that critical to the effective implementation of the objectives, policies and mechanisms agreed to by Governments in all programme areas of Agenda 21 would be the commitment and genuine involvement of all social groups, and that one of the fundamental prerequisites for the achievement of sustainable development was broad public participation in decision-making. Furthermore, the Conference recognized, in the specific context of environment, "the need for new forms of participation" and "the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in (pertinent) decisions". 22/

72. The Conference implicitly linked the notion of real participation in the right of access to information by noting that "Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures". 23/ The link between participation and information can also be found in Principle 10 of the Declaration of Rio.

73. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, places particular emphasis on participatory democracy and states solemnly that "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political economic, social and cultural systems and their full participation in all aspects of their lives." 24/

CHAPTER III. OTHER ASPECTS OF THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

A. Indigenous peoples and the environment

74. "This we know, the Earth does not belong to man; man belongs to the Earth. This we know, all things are connected, like the blood which unites one family. Whatever befalls the Earth, befalls the sons of the Earth. Man did not weave the thread of life; he is merely a strand in it. Whatever he does to the web he does to himself." This letter from Chief Seattle, Patriarch of the Duwamish and Squamish Indians of Puget Sound to United States President Franklin Pierce (1855) underlines the specific relationship of indigenous peoples to the land.

75. The Special Rapporteur considers the issue of indigenous peoples' rights and the environment of such importance that it warrants attention in her final report. The human rights problems facing indigenous peoples due to environmental factors are rapidly increasing. The number of communications received, the seriousness of the many situations presented, and the need for a multifaceted approach militate in favour of attention being paid to this issue. In this light, the Special Rapporteur has welcomed the interest of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which, in paragraph 2 of its resolution 1990/27 of 31 August 1990, invited the Special Rapporteur "to take into account the special relationship between fragile habitats and indigenous peoples, especially with regard to sustainability". The Commission on Human Rights, in its resolution 1991/44 of 5 March 1991, requested the Secretary-General to invite indigenous peoples and their organizations to provide the Special Rapporteur with information for this study.

76. The Special Rapporteur presented an introductory discussion of indigenous peoples' rights and the environment in her Note, in her preliminary report, in her first progress report, and in her second progress report. 25/ She received useful information at meetings with indigenous leaders that took place in New York and San Francisco in 1991 and in Rio de Janeiro in conjunction with the Global Forum at the United Nations Conference on Environment and Development in 1992. She also has received numerous communications from indigenous peoples and their organizations throughout the period of the study and has reviewed a wide range of materials from other non-governmental organizations and from United Nations and other sources.

77. As indigenous representatives have pointed out to the Special Rapporteur, international, regional and national action taken by indigenous peoples and their organizations to promote and protect their rights have always focused on the need of indigenous peoples to protect their traditional territories. This is because removal from or destruction or degradation of traditional lands inevitably leads to serious loss of life and health and damage to the cultural integrity of indigenous peoples. Describing his people's relationship to the land, in 1885 Chief Seattle stated:

"My people venerate each corner of this land, each shining pine needle, each sandy beach, each wreath of mist in the dark woods, each glade, each humming insect; in the thought and practice of my people, all these things are sacred. The sap rising in the tree carries the memory of the red man." 26/

78. Echoing Chief Seattle, one Indian leader stated to the Working Group on Indigenous Populations at its 1985 session:

"Our principal and fundamental struggle is for the land, our territory and natural resources ... Our defence of the land and natural resources is for the cultural and human survival of our children ... For us, the first thing is to secure our land, which belongs to us by right, because we are the true owners of the land and natural resources. We indigenous peoples know that without land there can be no education, there can be no health and there can be no life." 27/

79. Experts in the field have been particularly critical of large-scale development schemes in Indian lands, as reflected in the background papers submitted at the United Nations Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States (Geneva, 16-20 January 1989). In one background paper, Prof. Rodolfo Stavenhagen writes:

"Much damage has been done to the indigenous peoples through economic development projects ... The isolated, marginal areas often occupied by indigenous peoples constitute the last great and, until recently, unexploited reserves of natural resources. Neither State planners nor multinational corporations nor international development agencies have hesitated to 'incorporate' these areas into the national and international economy. In the process, indigenous peoples have suffered genocide and ethnocide." 28/

80. Another expert, Prof. Vitit Muntarbhorn, writes:

"[Cultural] disintegration is compounded by destruction of the ecology and habitat upon which indigenous groups depend for their physical and cultural survival. Deforestation, particularly of rain forests, and pollution introduced by outsiders jeopardize the modus vivendi of indigenous groups. The social nexus binding members of the group to the environment is thus annihilated." 29/

81. In part as a reflection on the comments of the experts at the 1989 seminar, the issue of indigenous peoples was addressed at the 1990 Global Consultation on the Realization of the Right to Development. Once again, the assessment of the environmental factors of human rights and indigenous peoples was harsh:

"The experience of indigenous peoples and development clearly demonstrated that human rights and development are inseparable, for the abuse of the rights of indigenous peoples is principally a development issue. Forced development has deprived them of their human rights, in particular the right to life and the right to their own means of

subsistence, two of the most fundamental of human rights. Indigenous peoples have been, in fact, victims of development policies which deprive them of their economic base - land and resources - and they are almost never the beneficiaries.

"It was underlined that the most destructive and prevalent abuses of indigenous rights are a direct consequence of development strategies that fail to respect the fundamental right of self-determination. Using illustrations, participants described how indigenous peoples are routinely perceived as obstacles to development and excluded from decision-making in matters that affect them. The result has been the elimination and degradation of the indigenous land base; destruction, degradation and removal of natural resources, water, wildlife, forests and food supplies from indigenous lands either through commercial exploitation or incompatible land use; the degradation of the natural environment; removal of indigenous peoples from their lands; and their displacement or pre-emption from the use of their lands by outsiders." 30/

82. The relationship between environmental concerns, development and the rights of indigenous peoples was also addressed at the 1992 United Nations Conference on Environment and Development and at the 1993 United Nations Conference on Human Rights. It was also a prominent feature in issues addressed in conjunction with the 1993 International Year for the World's Indigenous People.

83. The United Nations and its specialized agencies have long been concerned with the human rights of indigenous peoples. International action to safeguard the rights of indigenous peoples has increasingly focused on the land and environmental issues. For example, in 1957 ILO promulgated the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (No. 107). This Convention was revised by the Convention concerning Indigenous and Tribal Peoples in Independent Countries, (1989 No. 169), primarily to address the land rights issue. These two Conventions are the only international treaties specifically concerning indigenous peoples, although a number of indigenous groups signed treaties with Governments during the period of penetration of indigenous lands. 31/

84. The revised Convention shows the influence of indigenous peoples and their organizations in its new emphasis on land and the vital importance of land to indigenous peoples. Convention No. 169 represents substantial progress at the international level. Article 4 requiring special measures to protect the environment of indigenous peoples is especially important. This mandate is reinforced by article 7, which requires the direct participation of indigenous peoples and environmental impact studies prior to any development schemes in their territories. Part II (arts. 13-19) of the Convention specifically addresses land: article 13 recognizes the "special importance for the cultures and spiritual values" of their land; article 14 recognizes land ownership rights; article 15 recognizes the right to resources of their own lands; article 16 protects indigenous peoples from unlawful relocation from their lands; article 17 provides for procedures for redress, including the requirement that Governments prevent indigenous people from being deprived

of their land by unscrupulous acts; article 18 require penalties for land violations; article 19 requires provision of adequate land to enable indigenous peoples to live and increase normally.

85. ILO has a well-developed enforcement process by which indigenous peoples could seek remedies for the violation of the Convention. Regrettably, few Governments have ratified Convention No. 169 and there is no public information regarding complaints that are lodged. Additional ratifications will provide increased access to the ILO dispute-resolution mechanisms, including a procedure by which individuals may petition the ILO Governing Body through recognized representative organizations. Under other ILO procedures, organizations may call the matter to the attention of ILO in the form of a "representation". Or the ILO Governing Body may open a complaint on its own motion or at the insistence of a delegate to the International Labour Conference. Both representations and complaints are investigated, and the results may be published if the situation is not corrected. 32/

86. The study on racial discrimination, begun by the Special Rapporteur of the Sub-Commission, Mr. Hernán Santa Cruz, in 1965, contained a chapter on indigenous peoples. 33/ The Special Rapporteur's suggestion that the United Nations study the situation of indigenous peoples in a comprehensive fashion led to the appointment in 1971 by the Sub-Commission of Mr. José Martínez Cobo to carry out such a study. His report 34/ contains much discussion about indigenous peoples and their land. In 1981, the Sub-Commission proposed the establishment of the Working Group on Indigenous Populations, which met for the first time in 1982. The Working Group has prepared a draft declaration on indigenous rights, which is still under consideration by the Working Group. Throughout the drafting period, indigenous land rights and environmental concerns have been the most keenly contested, with indigenous organizations insistent that any formulation of their rights must firmly protect their lands from exploitation and ecological degradation. Their concern is clearly reflected in the 1992 draft as contained in the report of the Working Group on its tenth session, 35/ especially in operative paragraphs 17-20 and 38 which the Special Rapporteur set out in her second progress report. 36/

87. As a further reflection of serious concerns about indigenous peoples, human rights and the environment, in 1992 the United Nations sponsored the United Nations Technical Conference on Practical Experiences in the Realization of Sustainable and Environmentally Sound Self-development of Indigenous Peoples. The report and the background papers 37/ provide an analysis of the impact of ecological devastation on indigenous peoples and their struggle to protect their land and its resources, and to develop their economies in an ecologically sustainable fashion that does not jeopardize traditional ways.

88. In her review of cases brought to the Human Rights Committee and to the Inter-American Commission on Human Rights by or on behalf of indigenous peoples, the Special Rapporteur is impressed by the fact that the human rights violations at issue almost always arise as a consequence of land rights violations and environmental degradation and indeed are inseparable from these factors. In her progress report 38/ the Special Rapporteur described Communication No. 167/1984 addressed to the Human Rights Committee by

Chief Ominayak and the Lubicon Lake Band of Canada involving the threat to the lives and traditional ways and culture of the Band posed by oil and gas exploitation. The Human Rights Committee found violations of article 17 (minority/cultural rights) of the International Covenant on Civil and Political Rights in that case. 39/

89. At the Inter-American Commission on Human Rights the two cases already presented by the Special Rapporteur - the Yanomani case in Brazil 40/ and the Huaorani case in Ecuador 41/ raise questions concerning violations of the right to life, the right to health, the right to the promotion and protection of indigenous peoples' culture caused by development projects in their traditional territories. Other cases reviewed by the Inter-American Commission include the Guahibo Indians of Colombia, the Ache and Toba-Maskoy of Paraguay, the Miskito of Nicaragua, the Mayan of Guatemala, the Inuit and Athabascan of Alaska, the Kanaka Maoli of Hawaii. The Inter-American Commission has also raised Indian human rights issues in reports of States parties to the American Convention on Human Rights, 42/ involving the human rights consequences of displacement from and/or degradation of traditional indigenous lands.

90. The Inter-American Commission, in its Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, 43/ analysed relocation of indigenous peoples from their traditional lands from the point of view of human rights. The Commission found that involuntary relocation of indigenous peoples could be justified only under article 27 of the American Convention which allows for derogation of rights "in time of war, public danger, or other emergency that threatens the independence or security of a State Party". The Inter-American Commission reiterated that the danger must be extremely serious. However, involuntary relocation under these circumstances "should not outlive the emergency, and termination of the emergency should allow the return of the civilian populace to their original region". 44/ The Inter-American Commission asserted that relocation for lesser national goals, such as economic development, do not meet article 27 criteria, and may not be undertaken involuntarily. 45/

91. National courts are also increasingly being presented with indigenous human rights issues. Here too, the preponderance of cases involve indigenous lands and subsistence rights being effected by confiscation, degradation, inappropriate development or inappropriate regulation. In her second progress report, the Special Rapporteur described the Organización Indígena de Antioquia v. Codechoco y Madarien, 46/ in which the court emphasized that the destruction of the forest lands of indigenous peoples places their lives and cultures in danger. In this regard the Special Rapporteur would also like to note that in Regina v. Sparrow, 47/ the Canadian Supreme Court in 1990 upheld the fishing rights of Canadian indigenous peoples. In holding that Canada must be held to a "high standard of honourable dealing", the Court emphasized that the rights of indigenous peoples "must be interpreted flexibly to permit their evolution over time".

92. The Special Rapporteur notes with interest initiatives by indigenous peoples themselves to encourage indigenous self-development. The 1992 United Nations Technical Conference referred to above produced a wide array of useful strategies, many of them currently employed by indigenous people.

Recent sessions of the Inter-Commission Task Force on Indigenous Peoples of the IUCN World Conservation Union, at which indigenous leaders and others exchanged information and presented case studies on indigenous sustainable development, 48/ are also encouraging developments. The Special Rapporteur is pleased by the increasing cooperation between indigenous peoples and their organizations and environmental organizations which should enhance the abilities of indigenous peoples to preserve their territories from ecological destruction.

93. In spite of some encouraging events, the Special Rapporteur is aware that existing efforts to protect indigenous peoples' rights and their fragile habitat have been inadequate. The situation of indigenous peoples, especially as it relates to human rights and the environment, is at a critical point. No one single solution can hope to address the multifaceted problems. None the less, she is aware that alternatives to large-scale development schemes, with their potentially destructive consequences, exist.

94. These alternatives must be encouraged. Indigenous peoples must genuinely participate in all decision-making regarding their lands and resources. The international community, in particular the United Nations and regional monitoring procedures, must respond accordingly.

B. Protection of the environment in periods of armed conflict

95. Montesquieu wrote in L'esprit des lois: "The right of peoples is naturally based on this principle - that the various nations must in peace do one another the greatest good and in war the least evil". Despite the United Nations Charter's prohibition - in Article 2, paragraph 4 - of the use of force in international relations, war unfortunately remains a constant that fully demonstrates the value of international humanitarian law, a law which imposes rules for the conduct of hostilities, restricts the methods and means of warfare, and protects persons, property and environment liable to be affected in conflicts.

96. The principle of humanity and the concept of proportionality impose limits on war, the Declaration of St. Petersburg recognizing as early as 1868 that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy".

97. For their part, the Hague Conventions of 18 October 1907 and the regulations relating thereto contain provisions which deal with the protection of the environment, even though this term is not expressly used. In a report submitted to the General Assembly in 1993, 49/ ICRC rightly notes that "The destruction of property in times of armed conflict is also restricted by customary international law".

98. The Stockholm Declaration of 1972, apart from enunciating the general duty to protect and improve the environment, expressly states, in Principle 26, that "Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons".

99. The World Charter for Nature recognizes that "Nature shall be secured against degradation caused by warfare or other hostile activities" (sect. I, para. 5) and that "Military activities damaging to nature shall be avoided" (sect. III, para. 20).

100. These fundamental principles find their legal expression in various international instruments, and more particularly in the 1977 Protocol I Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts. Protocol I contains two provisions relating to the protection of the environment:

> "Article 35 - Basic rules
>
> ...
>
> "3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.
>
> ...
>
> "Article 55 - Protection of the natural environment
>
> "1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
>
> "2. Attacks against the natural environment by way of reprisals are prohibited."

101. As emphasized by the International Committee of the Red Cross (ICRC) in its reply to the Special Rapporteur, 50/ several factors have generally speaking prompted States to adopt, at the international level, rules relating to the protection of the environment: growing awareness of the deterioration of the environment; the realization of the risks entailed for the environment by certain technical and technological developments; or finding that certain types of damage to the environment are international in character. In the case of the protection of the environment in periods of armed conflict (principal sphere of application of the rules of international humanitarian law), two additional factors may be mentioned: the evaluation of the damage caused by the massive use of defoliants during the Viet Nam war, and a concern to differentiate ever more precisely between military objectives and civilian property.

102. In its analysis of the articles cited above, ICRC considers that the two provisions, which appear similar, do not duplicate one another, given the place they occupy in the systematics of the treaty and the objective they pursue: article 35, paragraph 3, falls within the context of methods and means of warfare and refers in particular to the principle - fundamental in international humanitarian law - whereby it is forbidden to inflict

unnecessary harm. It protects the environment as such and is therefore broader in scope than article 55, which is intended to protect the civilian population from the effects of warfare on the environment. In both cases the following are prohibited: (a) attacks on the environment as such; and (b) making use of the environment as an instrument of warfare". 51/

103. ICRC considers that, besides article 35, paragraph 3, and article 55, other provisions of Protocol I touch incidently on protection of the environment in armed conflict. In particular, article 56 deals with the danger to the environment resulting from the destruction of dams, dykes or nuclear electrical generating stations. Under the heading "Protection of objects indispensable to the survival of the civilian population", article 54 prohibits in certain circumstances the destruction of, among other things, agricultural areas or irrigation works. Finally, article 36 obliges the parties to Protocol I to determine whether the acquisition, development or use of a new weapon would be compatible with international law. Of course, the rules on the protection of the environment are to be taken into account during this assessment.

104. Several other legal instruments also deal with protection of the environment in wartime, in particular: the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, of 17 June 1925; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 10 April 1972; the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, of 10 December 1976; the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, of 10 October 1980; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, of 13 January 1993; the Convention for the Protection of Cultural Property in the event of Armed Conflict, of 14 May 1954; and the Convention concerning the Protection of the World Cultural and Natural Heritage, of 23 November 1972.

105. ICRC states that the rules protecting the victims of non-international armed conflict are less well developed than those governing international armed conflict. Article 3 common to the four Geneva Conventions of 1949 does not say anything about protecting the environment during civil wars; it addresses only humanitarian issues in the strictest sense. Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, contains no provisions relating explicitly to the environment. However, article 14, on the protection of objects indispensable to the survival of the civilian population, has a direct impact on warfare and the environment, with its prohibition of attacks on agricultural areas, irrigation works and so on.

106. The protection of the environment in time of armed conflict has come tragically to the fore in the Iran-Iraq conflict, the Gulf war and in the conflict in the former Yugoslavia. Although the ecological consequences of these recent conflicts cannot yet be determined precisely, they have fuelled questions about the content, limits, shortcomings and indeed effectiveness of

international humanitarian law intended to protect the environment as such, together with persons and their property, against damage to the environment i the course of hostilities. 52/

107. Although the United Nations Conference on Environment and Development d not pay the closest attention to the question of protection of the environmer in periods of armed conflict, Agenda 21 states that "Measures in accordance with international law should be considered to address, in times of armed conflict, large-scale destruction of the environment that cannot be justified under international law". In addition, the Declaration of Rio recognizes, in Principle 24, that "Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in it further development, as necessary".

108. For its part, the General Assembly adopted decision 46/417 on 9 December 1991 at the conclusion of its deliberations on the agenda item entitled "Exploitation of the environment as a weapon in times of armed conflict and the taking of practical measures to prevent such exploitation". It decided, in resolution 48/30 of 9 December 1993, to continue to consider the question of the protection of the environment in periods of armed conflic in the context of the United Nations Decade of International Law. At the sam time, it took note with appreciation of the results of the International Conference on the Protection of War Victims, (Geneva, 30 August to 1 September 1993), and its Final Declaration "as an important means for reaffirming, strengthening and promoting international humanitarian law", and reminded "all States of their responsibility to respect and ensure respect fo international humanitarian law in order to protect the victims of war".

109. The aims of this Conference, convened by the Swiss Government on the initiative of ICRC, were, inter alia "to elicit a strong reaction from the various States to widespread violations of international humanitarian law" an to consider "the measures which the States undertake and should further develop to prevent violations of international humanitarian law". On the question of the environment, the participants solemnly declared the need to "Reaffirm and ensure respect for the rules of international humanitarian law applicable during armed conflicts protecting cultural property, places of worship and the natural environment, either against attacks on the environmen as such or against wanton destruction causing serious environmental damage, and continue to examine the opportunity of strengthening them".

110. In conclusion, the participants affirmed their "conviction that, by preserving a spirit of humanity in the midst of armed conflicts, international humanitarian law keeps open the road to reconciliation, facilitates the restoration of peace between the belligerents, and fosters harmony between all peoples". The Special Rapporteur fully shares this conviction. Its translation into reality depends on the realization of the commitment entered into by the States parties to the Geneva Conventions to "respect and to ensure respect for" these Conventions "in all circumstances", and on the positive measures to be taken with a view to the prevention of conflicts and of violations of humanitarian law.

C. The environment, and international peace and security

111. The Special Rapporteur commented on the relationship between the environment, human rights, and international peace and security in her note and in her second progress report. 53/ Maintenance of international peace and security is a fundamental purpose of the United Nations and a duty of the Organization and its Member States. 54/ The importance of peace is underscored by its inclusion as a fundamental right in the Universal Declaration of Human Rights, especially its article 28. The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind 55/ and the Declaration on the Right of Peoples to Peace 56/ are especially relevant to the issue of human rights and the environment.

112. The present potential for purposeful or even accidental environmental harm is a serious threat to peace and security, whether during war or in peacetime. Nuclear weapons and biological and chemical substances can eliminate much if not all of life. There are now many methods of altering the climate and destroying essential foodstuffs, and the deprivation that would certainly follow would create social unrest and instability. Population pressures, with or without intentional environmental degradation, will inevitably lead to States vying with each other for resources essential for survival.

113. The International Law Commission recognizes the ominous potential of purposeful environmental destruction and has characterized serious and intentional harm to the environment as a crime against humanity. In the course of the debates in the Commission, it has been stated that acts with grave consequences to humans and the environment should be considered crimes and that there should be culpability for "flagrant errors and omissions". The debates also reflect the growing trend that destruction of the property of an ethnic group should be included in the concept of environmental harm.

114. In the Special Rapporteur's view, acts with substantial environmental and human damage falling short of crimes against humanity can still have a negative impact on international peace and security and are within the scope of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, the Charter of Economic Rights and Duties of States, and other relevant international instruments. The International Law Commission has also been considering this problem in preparing a draft instrument on international liability for injurious consequences arising out of acts not prohibited by international law. 57/

115. The World Health Organization has for its part notified the Economic and Social Council that, pursuant to resolution WHA 46.40 adopted by the World Health Assembly on 14 May 1993, the Director-General filed in the Registry of the International Court of Justice a request for an advisory opinion on the following question:

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach its obligations under international law, including the WHO Constitution?" 58/

116. The Special Rapporteur believes that it would also have been useful to ask that distinguished Court whether the manufacture, testing, possession a stockpiling of nuclear weapons and other weapons of mass destruction are lawful under international law.

CHAPTER IV. ENVIRONMENTAL DEGRADATION AND ITS IMPACT ON VULNERABLE GROUPS

A. Overview

117. Major environmental crises, such as the 1967 (Torrey Canyon), 1978 (Amoco Cadiz) and 1980 (EKOFIX) oil-spills, the Seveso (1976) and Bhopal (1984) chemical disasters, and the Chernobyl nuclear accident (1986), have highlighted the transnational nature of their impact and their multidimensional repercussions. The state of the environment is nowadays perceived as a worldwide problem that should be addressed globally, in a coordinated and coherent manner and through the concerted efforts of the international community. Issues such as the preservation of natural balances, the stability of the ecosystem as a whole, the preservation of natural resources or the very survival of the Earth are urgent because of the scale of environmental damage to the planet and its impact on the individual, on his well-being, and consequently on the enjoyment of fundamental rights, including the right to life.

118. According to the World Commission on Environment and Development (Brundtland Commission), since 1970, when the first Earth Day was celebrated, the world has lost almost 200 million hectares of forest; 11.4 million hectares of tropical forest have disappeared each year; one fifth of arable land has been affected by desertification. The Commission analysed the ecosystems and economic structures of various developed and developing countries. It drew attention to the need to match regulatory measures with planning in order to achieve "sustainable development" that would make it possible to satisfy the needs of present generations without jeopardizing the opportunities of future generations. The 1992 Earth Summit again highlighted the major threats looming over the planet and the interaction among various phenomena, as is illustrated by the following examples:

1. Climate changes

119. Emissions resulting from human activities increase the atmospheric concentration of gases producing a greenhouse effect. The greenhouse effect will take the form of heating up the planet, probably accompanied by a rise in the level of the sea that might seriously threaten the sea and the climate. The rise in that level in many parts of the world, in particular islands and low-lying areas, will have an effect on life, land, lifestyles, natural resources, cultural heritage and so on. Apart from the fact that the varying effects of climate on socio-economic systems have always imposed substantial constraints on development, the climate changes expected from the greenhouse effect may render those constraints utterly unbearable (effects on the water cycle and on food production chains; floods and drought; increase in the number, intensity and seriousness of natural disasters). These phenomena, while producing their own adverse effects on the enjoyment of human rights, will also worsen several existing problems and will affect most of all those populations, regions and countries that are particularly vulnerable.

120. In the words of the Ministerial Declaration of the Second World Climate Conference, "The potential impact of such climate change could pose an environmental threat of an up to now unknown magnitude; and could jeopardize

the social and economic development of some areas. It could even threaten survival in some small island States and in low-lying coastal, arid and semi-arid areas". 59/

2. Deforestation and wood stripping

121. Forests are subjected to a great many natural and man-made pressures (climate changes; air pollution; intensive logging, etc.) which have led to substantial losses of standing timber. The stripping and wasting away of forests are in evidence in all parts of the world, whether boreal, temperate or tropical; they contribute to environmental degradation (drought, desertification, erosion, genetic losses, extinction of species of fauna and flora, etc.) and to the disruption of local communities, their way of life and their crops, and impair their well-being and health.

3. Biological diversity

122. According to the progress report of the Secretary-General of the United Nations Conference on Environment and Development on conservation of biological diversity:

> "Biological diversity is fundamental to human life. It is a basic feature of the way in which living organisms are structured. As such, it provides support for ecosystems, for the regulation of water and the atmosphere and the basis for agricultural production. When genetic variations are lost, therefore, not only are specific and potential properties and adaptations also lost, but with them species are diminished, ecosystems are impaired and the ability to sustain human life is damaged".

4. Pollution, discharge of toxic and dangerous products, etc.

123. Pollution of the air, water and land from various sources, in particular through industrial disasters, presents great risks to the health, life and well-being of populations. Ecological disasters such as those of Bhopal and Chernobyl, to mention only two, have claimed many victims and caused shifts of population. According to the estimates of the League of Red Cross and Red Crescent Societies, "the Chernobyl disaster affected and still affects some 4 million people who, not to speak of the 135,000 evacuees from the villages closest to the power station, are still living on land contaminated by radiation and growing their food on it. These potential victims fear for their future, fear the illnesses and genetic mutations that the medical experts are still unable to predict; but most of them have nowhere else to go. 60/

124. The effects of ecological accidents, whether nuclear or not, are not merely dangerous to health; they are liable to contaminate land, watercourses, the air and the atmosphere. The same applies to the discharge of untreated wastewater into the ground and into surface water bodies, leading to the concentration of chemicals, dangerous substances and pathogenic agents in living environments. Furthermore these accidents are accompanied by traumas and emotional shocks associated with the evacuation of whole communities, their displacement and the splitting up of families. Another result is the

breakdown of the habitual lifestyle of the populations, who in addition live in a state of constant anxiety. The absence or shortage of reliable information about the induced or delayed effects of such disasters does nothing to reassure those populations. In some instances, where the disasters have occurred in underdeveloped regions or have befallen marginalized population groups, the relief, assistance and allowances extended to the victims fall far short of the requisite minimum standards, to the point where it is possible to detect practices akin to a veritable discrimination that flouts the principles of dignity and equality innate in every human being.

5. Transboundary transfer of hazardous wastes

125. The transfer of toxic and dangerous products and wastes across frontiers and their dumping also lead to violations of human rights, not only having regard to the risks incurred by man and his environment but also considering the observed trend to export dangerous substances produced in the North to developing countries, particularly in Africa. These intolerable practices, which impose severe risks on the South, are particularly outrageous in that they transfer problems to particularly vulnerable regions and populations (lack of resources for monitoring and prevention and of appropriate technology; absence of suitable legislation; broken-down sanitation; information that is unreliable, unusable, non-existent or inaccessible).

126. Until the mid-1980s, 80 per cent of the imports and exports of hazardous waste were between developed countries. 61/ In 1988, from 2 to 2.5 million tons of waste were transported among the European member countries of OECD. 62/ It was essentially only after 1986 that the North-South trend emerged. In this connection, Greenpeace has pointed out that between 1986 and 1988 over 6 million tons of hazardous waste were exported from the developed countries to the developing countries and the countries of Eastern Europe, in particular Romania and Hungary. 63/ It also asserted that of the 100 to 300 million tons of waste produced each year by the developed countries, some 50 million were shipped to Africa. 64/

127. While the local capacity for hazardous waste storage and elimination in the developed countries is steadily declining, the volume of waste produced continues to rise. Thus, the European Union is reported to have the capacity to eliminate an estimated 10 million tons of waste while it produces as much as 30 million tons a year. 65/

128. The scandals of 1987 and 1988, in particular the revelation concerning contracts between Western companies and African countries to which the companies concerned paid ridiculously low sums for land on which they could get rid of toxic waste, prompted the developing countries, and especially the countries of Africa, to react. Within this context, the Council of Ministers of the Organization of African Unity declared, in resolution 1153 (XLVIII) dated 25 May 1988, that such dumping was "a crime against Africa and the African people". 66/

129. Similarly, on 7 December 1988, the United Nations General Assembly adopted a resolution condemning the dumping of nuclear and industrial wastes in Africa. 67/

130. Simultaneously, the developing countries engaged in the drafting of a convention to regulate the transboundary movement of hazardous wastes in order fully to implement the principles already developed at the 1972 United Nations Conference on the Human Environment and by the United Nations Development Programme. 68/

131. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was the outcome of a compromise between the advocates of a complete ban on transboundary movements of wastes and those who wished to define the legal framework and conditions for the international transfer of wastes.

132. The 1989 Basel Convention marks a step forward in the assumption of responsibility for the problem, although it was considered inadequate by many countries, particularly those in Africa which drew up the Bamako Convention on the Banning of the Import into Africa and the Control of the Transboundary Movement of Hazardous Wastes within Africa, adopted on 29 January 1991.

133. At the 1992 Earth Summit, the international community expressed its concern that part of the international movement of hazardous wastes was in violation of national legislation and of existing international instruments, to the detriment of the ecology and public health of all countries, in particular the developing countries.

134. The following objectives were adopted within the framework of Agenda 21 in order to prevent the illegal transboundary movement of hazardous wastes: (a) to reinforce national capacities to detect and halt any illegal attempt to introduce toxic and dangerous products into the territory of any State, in contravention of national legislation and relevant international legal instruments; (b) to assist all countries, particular developing countries, in obtaining all appropriate information concerning illegal traffic in toxic and dangerous products; (c) to cooperate, within the framework of the 1989 Basel Convention in assisting countries that suffer the consequences of illegal traffic.

135. Governments were also urged to exchange information on illegal transboundary movements of hazardous wastes.

136. In the Vienna Declaration, the World Conference on Human Rights, held in 1993, recognized that "illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone" (A/CONF.157/24 (Part I), para. 11).

B. Vulnerable groups

137. The Special Rapporteur has already referred to the vulnerability of indigenous peoples to ecological hazards (chap. III, sect. A), and to that of individuals and groups who are marginalized by poverty (chap. II, sect. A). The specific situation of peoples under domination will be considered later. The following sections are concerned with other groups that illustrate this vulnerability, albeit not exhaustively.

1. Women

138. There was good reason why Agenda 21, which was drawn up by the United Nations Conference on Environment and Development, devoted considerable attention to "Global action for women towards sustainable and equitable development", and proposed a series of objectives for national Governments, together with activities and tangible measures to be undertaken to achieve the full integration of women into the development process and to ensure the effective implementation of their rights. 69/ The Declaration of Rio also notes that "women have a vital role to play in environmental management and development. Their full participation is therefore essential to achieve sustainable development" (Principle 20).

139. The decisive role of women in promoting development and preserving the environment is now firmly established. It is recognized that women's organizations have promoted environmental awareness, 70/ and that women play a critical role in the management, use and protection of natural resources and the environment, 71/ and in environmental education.

140. Even if, because of their traditional knowledge, skills and experience, women are no longer regarded as victims of environmental degradation, but as agents that possess essential assets for its preservation, it is still true that in practice they are the first to suffer from environmental degradation and among the last to enjoy the right to a satisfactory environment.

141. The Special Rapporteur notes that discrimination against women - regardless of their acknowledged formal rights and the ambitious programmes of action devoted to them, in conjunction with the social inertia and prejudice surrounding the issue of women's emancipation, accounts for the precarious situation of women and the thankless tasks that bring them face to face with the consequences of the deterioration in living, working, housing and other conditions, depriving them of opportunities to enjoy their fundamental rights.

142. In addition, because of delays in the enjoyment of civil, cultural and political rights, it is not possible to ensure effective and genuine participation by women in public life, and they are thereby prevented from influencing decision-making. Even if a favourable trend is discernible among local communities, in which women are increasingly involved in carrying out development projects, such participation needs to be further encouraged, developed and expanded. Moreover, it does nothing to remedy the fundamental imbalance in participation in public life and political office, from which women are virtually excluded, even in the developed countries. According to UNDP statistics for 1993, women in the developed countries made up 40 per cent of the total labour force, but still held fewer than 10 per cent of parliamentary seats. They held less than 5 per cent of ministerial and other senior posts throughout the world. 72/

143. The Special Rapporteur cannot fail to note a disturbing discrepancy between recognition of the decisive role played by women in promoting sustainable development and the place they occupy in practice. As was noted in a report by the United Nations: 73/

"Without their political participation, progress in the other areas may be slow since it is often dependent on resources that come from public sources. There is a close reciprocal relationship between the general advancement of women and the participation of women in decision-making. Women's political participation will be enhanced if social and economic support structures exist, legal discrimination is eliminated and negative stereotypes are banished from education and the media. No country can afford not to utilize all its human resources. Women comprise half the world's pool of potential talent and ability. The importance of their fundamental biological and social roles is clear, and, though their input is often unrecognized, they are major contributors to national economies through their paid and unpaid labour. Excluding women from positions of power and from elected bodies impoverishes public life and inhibits the development of a just society. In short, without the full participation of women in decision-making, the political process will be less effective than it can and should be, to the detriment of society as a whole".

2. Children and young people

144. Children and young people make up approximately 30 per cent of the world's population and virtually half the population of the developing countries. They are a force for the future in which investment is vital. They are extremely vulnerable to the consequences of environmental degradation and are entitled to effective protection. The vitality of these ardent defenders of nature should be channelled in order to transform them into active supporters of the ecological cause.

145. As was underscored by UNICEF in The state of the world's children 1994, "the cause of meeting the most basic needs of all children must now be taken up with a new determination, both for its own sake and as an essential step towards resolving the problems of poverty, population growth and environmental deterioration". However, there is no forgetting the figures that bring us face to face with reality. Fourteen million children die each year from preventable diseases. Over the past 10 years alone, 1.5 million children are estimated to have died during conflicts, while 4 million bear the scars of conflict. There are 5 million refugee children, and another 12 million have been displaced. 74/ The child victims of rape, ill-treatment and torture, child soldiers, street children, unwilling drug pushers, economically exploited child labourers, sexually abused children, children in debt bondage, hundreds of millions of children are the victims of contemporary forms of slavery. 75/ They are trapped in what UNICEF has rightly described as the "poverty-population-environment" (PPE) spiral. The huge potential of children and youth is jeopardized by "the mutually reinforcing problems of persistent poverty, rapid population growth and environmental degradation".

146. Meeting the essential needs of the poorest for adequate nutrition, safe water, basic health care, basic education and family planning is one of the most powerful ways of breaking into the destructive synergisms of the poverty-population-environment problem.

147. Education and a minimum of prosperity are essential if environmental problems are to be contained and if poor people too are to have a stake in the future. 76/

3. Disabled persons

148. The Special Rapporteur wishes to refer to the situation of disabled persons in order to highlight the particular impact of the environment on the enjoyment of their rights as human beings and of their specific rights to enhanced protection which derive from the need to cater for their special requirements.

149. While environmental factors are frequently responsible for disability, the environment in which a disabled person lives is also likely to restrict access to essential care and services, aggravate disabilities, restrict the possibility of enjoying fundamental rights, and even lead to their total denial (right to life, to health, to work, to participation; discrimination, etc.).

150. The Special Rapporteur has discerned a tendency to minimize the problems posed by disabilities, despite the fact that estimates, such as those of WHO, indicate that over 500 million individuals, i.e. 10 per cent of the world's population, suffer from some form of disability. In addition, 300 million of them live in the developing countries, where they are confronted with the inadequacy of assistance and rehabilitation services. Moreover, according to estimates by ILO, one third of disabled people, i.e. 160 million, are women, and 140 million children. These estimates lead to an unavoidable conclusion: the impact of the environment on disabled persons is felt at all stages, at several levels and in varying degrees - upstream as a cause of disability, and downstream by making the possibility of reintegration more difficult. Consequently, throughout their lives, disabled people suffer violations of their rights as individuals, as women or children, as disabled persons - a situation that is exacerbated by poverty.

151. The Special Rapporteur underscores the need for preventive measures to reduce the risk of disability. Non-governmental sources increasingly highlight environmental factors as causes of disability (air and water pollution; armed conflict, chemical weapons and vestiges of war, particularly mines; unhealthy living conditions; inadequate standard of living; natural disasters; technological accidents; nuclear catastrophes; dumping of toxic or hazardous products, etc.).

152. Where natural disasters or man-made accidents are concerned, disabled people are the first victims; they require special assistance which is not always available. This issue deserves special attention, as do the conditions for the reintegration of disabled people into the social, cultural, economic and political life of their country. In this connection, the Special Rapporteur endorses the recommendations contained in the United Nations study Human rights and disabled persons. 77/

153. As was stressed by a representative of Disabled Peoples' International:

> "We can look at the effects on people with disabilities from different points of view: (i) when environmental problems occur in the form of a catastrophe, the first victims are disabled peoples. Other people have better possibilities to look for shelter or space; (ii) when environmental problems occur step by step, the first victims are disabled people because they are many times weaker and more sensitive to pollution, for example; (iii) environmental problems make the world less accessible and disabled people are more dependent on others. Life is more complicated and more handicapping. Without these problems disabled people could live more independently; (iv) the man-made environment has been planned almost everywhere until recently without considering disabled people as a part of the community. People make environmental problems; (v) environmental threats are disabling and make disabilities more serious." 78/

4. Environmental refugees

154. The Special Rapporteur reiterates the concern she has previously expressed for the plight of persons displaced from their homes by adverse environmental conditions. 79/ Such persons have a wide range of rights - whether or not they qualify as "refugees" under the restrictive definition provided in the 1951 Convention relating to the Status of Refugees 80/ or its 1967 Protocol; 81/ or under the more expansive definitions in the 1969 Organization of African Unity Convention governing the Specific Aspects of Refugee Problems in Africa 82/ or the 1984 Cartagena Declaration on Refugees. 83/ At a minimum, such persons have the right to life, the right to health, food and shelter, and the right not to be sent to any location where their lives or security are endangered.

155. For the purposes of this report, the Special Rapporteur uses "environmental refugee" to refer to anyone forced to leave his or her normal habitat because of serious environmental disruption. This includes those who flee their homes temporarily and those forced to flee permanently, internally or across international borders.

156. Environmental refugee flows may arise from purely natural events, such as earthquakes; purely human activities, such as industrial accidents; or combinations of natural and human acts, such as excessive rainfall in a deforested area, which gives an otherwise manageable natural event disastrous consequences. The Special Rapporteur notes with special concern that all three types of environmental catastrophe strike poorer, less developed areas with significantly higher frequency than they do more affluent areas. 84/

157. The types of natural events that contribute to the creation of environmental refugees include drought, famine, tropical storms and earthquakes. Human factors that combine with natural factors to create environmental refugee flows tend to involve matters of environmental management, including land degradation (desertification), deforestation and depletion of the natural resource base. Purely human-generated environmental

disasters include the construction of large dams, industrial accidents such as chemical explosions and nuclear accidents, improper handling of hazardous wastes and, of course, armed conflict and its consequences.

158. The Special Rapporteur is also concerned by the environmental degradation that often results from the sudden influx of refugee populations on already stressed lands. This degradation stems from increased demands for food, fuel and other subsistence resources. The Special Rapporteur notes the General Assembly's increasing attention to this set of problems. In resolutions passed during its forty-eighth session, the General Assembly noted the environmental pressures posed by refugees and displaced persons in Central America (res. 48/117), in Azerbaijan (res. 48/114) and in many parts of Africa (res. 48/118).

159. People who flee their homes for environment-related reasons require humanitarian assistance simply to meet their basic survival needs. They do not necessarily seek political asylum or require the kind of international protection implied by the term "refugee". Many are displaced within their own countries, yet the scope of the problem may exceed the capacity of their Government and may therefore involve the international community. In this regard, the Special Rapporteur has examined the reports 85/ of Mr. Francis Deng, the representative of the Secretary-General on internally displaced persons to the Commission on Human Rights. She hopes the international community will implement the concrete suggestions made by the representative.

160. UNHCR is particularly well placed to facilitate the delivery of essential services to displaced persons in emergency situations, on humanitarian grounds. 86/ The General Assembly affirmed the need to incorporate environmental concerns into the work of the UNHCR. UNHCR has recognized the need to improve understanding of the relationship between migration refugee flows and development and environmental issues. 87/

CHAPTER V. ANALYSIS OF THE EFFECTS OF THE ENVIRONMENT ON THE ENJOYMENT OF FUNDAMENTAL RIGHTS

161. Recent sources observe that as from the beginning of the twenty-first century more than half the world's population will be living in urban areas. In 2025 this figure will have reached 65 per cent, or 5 billion persons. More than 850 million people live in regions affected by desertification. The destruction of the tropical forests is advancing at a rate of approximately one football pitch per second. The inhabitants of the industrialized countries still consume 10 times as much commercial energy as those of the developing countries and produce 71 per cent of the world's carbon dioxide emissions and 68 per cent of its industrial waste. Poverty particularly affects children, 13 million of whom die annually before their fifth birthday. Women are still barred from posts of responsibility and hold fewer than 10 per cent of parliamentary seats throughout the world. More than 2 million deaths and billions of cases of disease can be attributed to pollution. Between 400 million and 700 million people, mainly women and children from poor rural areas, are affected by the smoke-filled atmosphere of their homes. Between 300,000 and 700,000 premature deaths annually can be attributed to pollution in cities. The thinning of the ozone layer may cause annually 300,000 additional cases of skin cancer worldwide and 1.7 million cases of cataracts. 88/

162. The Special Rapporteur has deliberately, without arranging them in any order, presented observations concerning the deterioration of the environment and figures concerning the standard of living, death rate, health, participation, etc. in order to stress the close interaction between the assaults made on the environment and the enjoyment of human rights, which she has already had occasion to mention in the introduction to her earlier reports. The analysis which follows, while endeavouring to supplement the data contained in the earlier reports, is based on examples which, though illustrative, should not be regarded as exhaustive.

A. Right to self-determination and permanent sovereignty over natural resources

163. Denial of the right of peoples to self-determination and to dispose of their natural wealth and resources has been and remains one of the deep-seated causes of underdevelopment and of the serious damage inflicted on the environment in formerly colonized countries and countries still under occupation.

164. The denial of the right of peoples to self-determination and practices in the occupied territories, characterized by massive and systematic violations of human rights, lie at the origin of the degradation suffered by the environment in those territories and of the damage done to the cultural heritage and living conditions of the population, who are reduced to living in camps, precarious housing and areas bereft of basic sanitation.

165. Population transfer, including the implantation of settlers and settlements, directly violates the cardinal principle of the right of peoples to self-determination and at the same time generates further violations of the principles of international law and human rights. The implantation of

settlers and settlements, particularly in countries under foreign domination and in occupied territories, is generally part of a deliberate policy with the aim of changing the demographic structure and the political, cultural, religious and other characteristics of the countries and peoples in question, with the intent to destroy, in whole or in part, a national, ethnic, racial, religious or linguistic group as such, to ensure the domination of one group over another, or to distort the results of a planned self-determination referendum. In all cases, these are illegal practices which run counter to fundamental principles of international law. In some situations, these practices may be regarded as amounting to genocide. 89/

166. The right to development implies, as the Declaration on the Right to Development makes clear, the full realization of the right of peoples to self-determination and to full sovereignty over all their natural wealth and resources. The pillage of a country's natural resources favoured by relations of political, economic or other subjection or dependence leads to uncoordinated and extroverted development which, besides keeping the country in a state of chronic underdevelopment, worsens the adverse consequences which that type of development produces on the environment (intensive exploitation of raw materials and products that upsets the ecological balance; wastage of non-renewable energy resources; establishment of polluting and high-risk industries; pauperization of rural areas, etc.).

167. The United Nations General Assembly for its part has regularly reiterated the principle set out in resolution 1803 (XVII) of 14 December 1962 whereby "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned." General Assembly resolution 48/46 of 10 December 1993 is worth noting here in connection with the activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, in which the General Assembly reaffirms "the solemn obligation of the administering Powers under the Charter of the United Nations to promote the political, economic, social and educational advancement of the inhabitants of the Territories under their administration and to protect the human and natural resources of those Territories against abuses" and emphasizes that "the natural resources are the heritage of the indigenous populations of the colonial and Non-Self-Governing Territories". At the same time, the General Assembly expresses its concern about "the activities of those foreign, economic, financial and other interests that exploit" the resources of those Territories. In resolution 48/47 of 10 December 1993, the General Assembly "Urges the specialized agencies and other organizations of the United Nations system to formulate programmes that will support the sustainable development of small island Non-Self-Governing Territories and adopt measures that will enable those Territories to cope effectively, creatively and sustainably with environmental changes and to mitigate impacts and reduce the threats posed to marine and coastal resources."

168. It may also be noted that Principle 23 of the Declaration of Rio states that "The environment and natural resources of people under oppression, domination and occupation shall be protected."

169. On the question of the occupied Arab territories, the Commission on Huma Rights inter alia adopted resolution 1994/1 on 18 February 1994, in which it welcomed "the positive development which originated with the International Peace Conference on the Middle East, convened at Madrid on 30 October 1991, including in particular the Declaration of Principles on Interim Self-Government Arrangements signed by the Government of Israel and the Palestine Liberation Organization on 13 September 1993, as well as all the efforts for the creation of a peaceful and stable environment in the Middle East", while declaring itself "Gravely concerned at the establishment by the Israeli Government of settlers in the occupied territories, which may change the physical character and demographic composition of the occupied territories." The Commission took note of the information submitted by its Special Rapporteur referring to "confiscation of land by the Israeli authorities before and after the signing of the Declaration of Principles on 13 September 1993"; it "Urges the Government of Israel to abstain from installing any settlers in the occupied territories."

170. The Special Rapporteur welcomes the results of the first free and democratic elections in South Africa, which led, on 10 May 1994, to the establishment of a united, democratic and non-racial Government. She hopes that effective and decisive measures will be taken to eliminate the effects of the policy of apartheid. She welcomes the fact that the new South African Constitution contains a number of provisions concerning the fundamental rights of the individual and stipulates, in article 29, that "every person shall have the right to an environment which is not detrimental to his or her health or well-being".

171. The Special Rapporteur notes with satisfaction that in President Nelson Mandela's inaugural address to Parliament on 24 May 1994, specific mention was made of the measures to be taken to protect the environment and ensure the participation of society in the decision-making process. In particular, President Mandela said:

> "My Government is committed [...] to bring into the decision-making processes organs of civil society [...] The Government will take steps to ensure the provision of clean water on the basis of the principle of water security for all and the introduction of proper sanitation sensitive to the protection of the environment. We are determined to address the dire housing shortage [...] Health also remains a fundamental block of humane society [...] We must combat such social pathologies as widespread poverty [...] I am especially pleased that we have a ministry dedicated to the issue of environment. Its work must impact on many aspects of national activity and address the question of well-being of society as a whole and the preservation of a healthy environmental future even for generations not yet born."

B. Right to life

172. The right to life is unanimously considered to be a fundamental right of a suprapositive character in that it is a norm erga omnes enforceable in respect of all persons, even where there is no treaty obligation. The right to life is included among the peremptory norms (jus cogens) from which "no derogation is permitted". 90/ It is therefore part of the list of the

fundamental rights of the individual from which, under the International Covenant on Civil and Political Rights of 1966 (art. 4), the European Convention on Human Rights of 1950 and the American Convention on Human Rights (Pact of San José of 1969), no derogation is permitted.

173. The Human Rights Committee considered in its General Comment 6 that the right to life is "the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation ... It is a right which should not be interpreted narrowly ... the protection of this right requires that States adopt positive measures," such as "measures to reduce infant mortality and to increase life expectancy ... to eliminate malnutrition and epidemics." 91/

174. According to Professor Galicki, "The right to life is the most important among all human rights legally guaranteed and protected by contemporary international law. On the other hand, the right to life is the one which is, most of all, connected to and dependent on proper protection of the human environment. It is because this right, like no other, may be directly and dangerously threatened by detrimental environmental measures. The right to life and the quality of life depend directly on positive or negative environmental conditions. Simultaneously, we cannot forget that this is an original right from which all other human rights derive." 92/

175. As has been noted throughout the foregoing discussion, most assaults on the environment lead to a deterioration in living conditions and constitute risks for survival if not actually accompanied by deaths directly or indirectly caused by these assaults. In the words of Mr. R.G. Ramcharan:

> "Threats to the environment or serious environmental hazards may threaten the lives of large groups of people directly; the connection between the right to life and the environment is an obvious one ... . A discussion of the interrelationship between the two rights should, however, go beyond this ... [and] may be summarized in the following proposition: 1. There is a strict duty upon States, as well as upon the international community as a whole, to take effective measures to prevent and safeguard against the occurrence of environmental hazards which threaten the lives of human beings. 2. Every State, as well as the United Nations (UNEP), should establish and operate adequate monitoring and early-warning systems to detect hazards or threats before they actually occur. 3. States which obtain information about the possible emergence of an environmental hazard to life in another State should inform the State at risk or at least alert UNEP on an urgent basis. 4. The right to life, as an imperative norm, takes priority above economic considerations and should, in all circumstances, be accorded priority. 5. States and other responsible entities (corporations or individuals) may be criminally or civilly responsible under international law for causing serious environmental hazards posing grave risks to life. This responsibility is a strict one, and should arise irrespective of whether the act or omission in question is deliberate, reckless or negligent. 6. Adequate avenues of recourse should be provided to individuals and groups at national, regional or international levels, to seek protection against serious environmental hazards to life. The establishment of such avenues of recourse is essential for dealing with such risks before they actually

materialize." 93/ As emphasized by A.A. Cançado Trindade, the rights to life and health are "at the basis of the ratio legis of international human rights law and environment law". 94/

C. Right to health

176. As recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, other human rights instruments and most national constitutions, everyone has a right to the highest attainable standard of health. In the environmental context, the right to health essentially implies feasible protection from natural hazards and freedom from pollution, including the right to adequate sanitation. This right is directly linked to the right to water and food, to safe and healthy working conditions, and to housing.

177. Numerous communications were received pointing to the direct link between adverse environmental conditions and violations of the right to health, and exemplifying the irreversible impacts on health of large-scale industrial accidents as well as the deleterious effects of other less spectacular sources of pollution, such as the continuous discharge of toxic and hazardous substances into air, soil and water. Contaminating substances frequently enter the food chain and lead to respiratory and skin diseases, among others.

178. Natural disasters and climate change conditions are also an increasing reason for widespread health concerns, particularly as a result of massive floods, which, linked to major sanitation problems and unsafe water, result in the rapid spread of contagious diseases. Also to be noted are the catastrophic effects of desertification and drought, particularly in Africa, as they result directly in lack of food and water. Drought and desertification cause massive displacement of peoples, social insecurity and widespread living conditions at a level not commensurate with human dignity. The Special Rapporteur wishes to emphasize the importance of ensuring the availability of safe water in quantities adequate to maintain or improve human health and life.

179. Environmental problems negatively affect human health in both the industrialized and the developing world, but those relatively poorer and disadvantaged minorities are most greatly harmed by adverse environmental conditions. This situation is particularly exacerbated by lack of information about the environment of local populations, insufficient infrastructure, inadequate social security systems or inadequate access to such services.

180. The link between the environment and human health has repeatedly found reflection in the international and domestic instruments, either explicitly or under a more general expression of a right to adequate conditions of life. 95/ When asserting the right to the environment, current provisions express it in terms of the right to a healthy environment. This qualification of the environment has been generally interpreted to mean that the environment must be healthy in itself - free from "diseases" that hinder its ecological balance and sustainability - and that it must be healthful, that is conducive to healthy living.

181. The International Covenant on Economic, Social and Cultural Rights recognizes that to achieve the full realization of the right to health it is necessary to ensure the improvement of all aspects of environmental and industrial hygiene. As noted by the Special Rapporteur in her 1992 progress report, the implementation of the right to health contained in the 1961 European Social Charter has led the Committee of Independent Experts to take into account measures to prevent, limit or control pollution. 96/

182. Indigenous peoples have alleged in international forums violations of their right to health as a result of environmental destruction. 97/ In one key case, the Inter-American Commission on Human Rights found that the right to health and well-being of indigenous peoples had been violated as a result of the negative environmental effects and dissemination of disease that followed from road construction in the rainforest. 98/

183. International environmental law instruments have frequently referred to the negative effects on health of environmental pollution. Many of these instruments define pollution as the introduction by man of substances or energy into the environment resulting in such deleterious effects as hazards to human health or which harm/endanger human health. 99/

184. The right to health can be constructively viewed from an environmental perspective in the light of the principles of sustainable development. Under these principles, another facet of the right to health reaches full meaning: as stated by the World Health Organization (WHO), "human health is essential for sustainable development since without health, human beings would not be able to engage in development, combat poverty and care for their environment". Thus, there is clear interdependence between health and environmental protection. As WHO points out, "... health status is nearly always the best as well as first indicator of environmental degradation". 100/

185. Although it was already present in the Stockholm Declaration - and particularly well addressed as a sustainable development issue in the report of the United Nations Conference on Environment and Development - it is important to note the significance of health being part of the first principle of the 1992 Rio Declaration and the multiple references to the protection and promotion of health in Agenda 21, particularly in chapter 6, which deals exclusively with human health.

186. The Special Rapporteur welcomes the increased action taken by Governments and United Nations agencies such as FAO, UNEP and WHO, in preparation for and as a result of UNCED, to address environmental problems and their impact on human health. In particular, she notes the significant amount of documentation provided by WHO and appreciates representatives from this organization meeting with her in a special session to discuss a wide variety of matters regarding the relationship between environmental issues and the right to health. The Special Rapporteur would like to acknowledge some recent initiatives of WHO, such as the report of its Commission on Health and the Environment, Our Planet, Our Health, 101/ the comprehensive background paper for the Commission on Sustainable Development (CSD) by the Task Manager on Health, the development of programmes on cities and the environment and on health support systems, and the "Global Strategy for Health and the Environment". She also commends the Political Statement and Action Programme

of the March 1994 Ministerial Conference on Drinking Water and Environmental Sanitation, particularly part 2 on "Water, Health and the Environment". 102/

187. As emphasized at this Conference and by CSD and WHO, significant financial resources need to be allocated to ensure adequate protection of health from negative environmental conditions. Indeed, funding of health protection and promotion must be applied in a framework of international and national equity and solidarity, taking into consideration at all times the fact that the right to health echoes fundamental human needs. 103/ Obviously, there is also a need to ensure that structural adjustment programmes do not cut allocations for health care, education and environmental protection.

D. Right to food

188. International articulations of the right to an adequate standard of living - including those set forth in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights - recognize the right to food as an essential component of the right to health. Food security is inextricably linked to an environment free from degradation and it depends on environmentally sound and socially sustainable development. 104/

189. The Special Rapporteur notes with concern the point raised at UNCED and generally recognized that massive numbers of people suffer from lack of food while the world as a whole produces sufficient food to feed everyone. Principle 31 of the Vienna Declaration and Programme of Action of the World Conference on Human Rights also proclaims that food shall not be used as a tool for political pressure.

190. Special attention should be devoted to eliminating the use of food as a weapon, whether in times of armed conflict or as a more general tool of oppression. In either case, interference with access to, production of and distribution of food often leads to severe environmental stresses and forces people to sacrifice long-term environmental sustainability in order to meet short-term subsistence needs.

191. The right to food is evidently linked to the issues of extreme poverty and underdevelopment (see chap. 2).

E. Right to safe and healthy working conditions

192. The environmental dimension of the right to work needs to be understood in the light of the right to health and in the general context of the right to an adequate standard of living with due regard to the right to safe and healthy working conditions.

193. Realization of this right requires a working environment free from pollution and other hazards, where workers' health is not threatened by circumstances such as exposure to asbestos, contact with pesticides and fungicides, or inhalation of toxic substances. Fulfilment of this right in turn requires the right to know and to have access to relevant information on

environmental and health risks, the right of expression and association to facilitate collective action, and the recognition of the workers' right to refuse to pollute at the workplace.

194. Numerous conventions concluded under the auspices of the International Labour Organisation (ILO) address many different environmental aspects of occupational health and safety. 105/ Vulnerable groups such as children, indigenous peoples, migrant workers and women suffer disproportionately from violations of the right to safe and healthy working conditions. This underlines the necessity of ratifying the international instruments and improving ways and means by which provisions of these instruments can be fully implemented.

F. Right to housing

195. The fundamental right to adequate housing has both a firm basis in international human rights law and a significant environmental dimension. As noted by Mr. Rajindar Sachar, Special Rapporteur on the right to adequate housing, housing rights involve survival, health and environmental conditions in a holistic and interdependent framework and one which transcends the outdated "four walls and a roof" view of housing. 106/

196. Agenda 21 parallels Mr. Sachar's holistic view of housing rights and sets an objective of achieving adequate shelter, especially for the poor, through an enabling approach to shelter development and improvement that is environmentally sound.

197. The right to adequate housing is enshrined as a basic human right in article 25 (1) of the Universal Declaration of Human Rights, and article 11 (1) of the International Covenant on Economic, Social and Cultural Rights. Both instruments describe the right to housing as an essential component of the right to an adequate standard of living. The right to housing also appears in many other international, regional and national legal instruments. 107/

198. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991) on the right to housing, explains that the right to housing means, among other things, housing not built on polluted sites or in close proximity to pollution sources that threaten the right to health of inhabitants. 108/ The Committee requires that States parties to the International Convention on Economic, Social and Cultural Rights include in their reports to the Committee information on measures concerning environmental planning and health in housing and human settlements. 109/

199. The right to adequate housing also includes the obligation to avoid forced evictions, a practice that constitutes a gross violation of human rights. 110/ Of particular concern is the fact that States often fail to comply with their obligation not to carry out or advocate forced or arbitrary evictions of persons or groups. Forced evictions should take place only when conservation and rehabilitation are not feasible and suitable relocation measures are undertaken. Where forced evictions cannot be avoided, the affected persons have a right to just compensation.

200. In addressing forced evictions, we should not forget the importance of the right to property which includes the right not to be deprived of land, water resources and other aspects of one's habitat, and it thus precludes deforestation and other environmentally destructive acts. 111/

201. In carrying out structural adjustment programmes and other activities, the international financial institutions, development agencies and Governments should pay particular attention to the possible adverse effects of those programmes and specifically to the issue of displacing people from their homes. The pressure on financially strapped Governments to divert their limited financial resources from dealing with housing, environmental and other problems to making their payments to funding agencies only exacerbates the problem. The institutions concerned must take into account the environmental and housing rights consequences of their activities throughout the project process, from planning to implementation and monitoring. 112/

202. The realization of the environmental dimension of the right to adequate housing requires concurrent attention to the rights to health and food, and to the eradication of poverty.

G. Right to information

203. The Special Rapporteur considers the right to information highly relevant to human rights and the environment. Public access to information on request and the obligation of public authorities to disclose it irrespective of requests are essential for the protection of the environment and the prevention of environmental human rights problems.

204. In the Special Rapporteur's view, the right to information relating to the environment requires that information be relevant and comprehensible; that it be provided in a timely manner; that the procedures to obtain information, if established, be simple and brief; that the cost to individuals and groups be reasonable; and that it be available across State boundaries. The Special Rapporteur also considers that the right to information includes the right to be informed, even without a specific request, of any matter having a negative or potentially negative impact on the environment. It is clear to the Special Rapporteur that the right to information imposes a duty on Governments. It is also clear to the Special Rapporteur that the right to information imposes a duty on Governments to collect and disseminate information and to provide due notice of significant environmental hazards.

205. The main human rights instruments prominently feature the right to information. This right appears in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. 113/ Article 1 of the draft Declaration on Freedom of Information 114/ provides that "the right to know and the right freely to seek the truth are inalienable and fundamental rights of man". Article 2 of the Declaration sets out governmental duties relating to the free flow of information. Article 4 provides that those who disseminate information have a duty of good faith to report accurately on the facts. Other provisions of international instruments stress that information must be accurate and relevant. 115/

206. United Nations bodies and specialized agencies frequently have emphasized the importance of information in the area of environment. The Declaration of the United Nations Conference on the Human Environment contains reference to the right to information in Principle 19. The 1972 United Nations Educational, Scientific and Cultural Organization Convention for the Protection of the World Cultural and Natural Heritage 116/ requires States to provide the public with information on dangers to the environment. The World Charter for Nature 117/ also contains provisions relating to information, including paragraph 21 (a). Principle 10 of the 1992 Rio Declaration on Environment and Development indicates the duty of States to make information "widely available".

207. Several regional organizations have also emphasized the need for information regarding the environment. The League of Arab States proclaimed the Arab Declaration on Environment and Development and Future Perspectives 118/ in which the League stresses the right of persons and groups to relevant information, including technical data. In the European Union several directives and recommendations stress the right to information. The EC Directive on Freedom of Access to Information on the Environment 119/ covers the issue most comprehensively. 120/ Regional environmental treaties also emphasize the right to information, including the affirmative duty to disclose or provide information. For example, the Nordic Convention on the Protection of the Environment 121/ requires the States parties to publish relevant information in the newspapers or other forms of public media; the ASEAN Agreement on the Conservation of Nature and Natural Resources 122/ requires the States parties to disclose and disseminate relevant information. Certain international treaties, such as the Antarctic Protocol on Environmental Protection, 123/ require States to provide environmental information upon request. Other international treaties impose a duty to warn other States of environmental dangers. 124/

208. Within the United Nations system, reporting requirements and increased dissemination of environmental issues can enhance the right to information. Within the United Nations Environment Programme, for instance, performance reports are requested of Governments and organizations. These reports are available to the public. Other branches of the United Nations system are carrying out initiatives to provide relevant and timely information and education regarding the environment. For example, the Department of Public Information has released Status of World Environment in Mexico, Italy and Japan in the local languages, thereby greatly enhancing international dissemination of this important work. 125/ The General Assembly, in its 11 December 1990 resolution 45/76 entitled "Questions relating to information", directed the Department of Public Information to pay particular attention to both human rights and the environment in its information activities.

209. The right to information is frequently presented as an individual and group right which constitutes an essential attribute of the democratic processes and the principle of popular participation. Indeed, the concept of democratic government as stated in article 21 of the Universal Declaration of Human Rights becomes meaningless unless individuals and groups have access to relevant information on which to base the exercise of the vote or otherwise express the will of the people.

210. Violations of the right to information in the environmental context arise in various ways. The Special Rapporteur cannot discuss all the situations brought to her attention, but wishes to present a few examples by way of illustration. First, violations occur when development projects or other activities with great potential impact on the environment and people's rights involve a Government, government contractors, and perhaps international funding sources. Relevant information may be in many locations and with many entities, making access by the public difficult. International funding sources or transnational corporations may not allow private access to information under their control.

211. Violations can also occur when Governments invoke national security or other reasons as justification for withholding of information from the public. Violations may be compounded where it is not possible to obtain judicial review of the Government's non-disclosure. The Special Rapporteur has received reports of serious human rights violations suffered by people as a result of efforts to obtain information about environmental situations. Problems affecting the realization of the right to information can also arise when Governments appear to cooperate but instead provide limited information, or provide it either piece by piece or in vast, unmanageable quantities with no apparent order or relevancy. Individuals or groups seeking to monitor activities having an impact on the environment or to assess environmental harm already done may not be able to use the information in a timely, effective manner.

212. Problems also occur when people or groups are prevented from disseminating information regarding ecological problems by a court. For example, the use of the sub judice rule has been effective in many areas in suppressing vital environmental information. Under the sub judice rule once a legal action has been filed, it may not be commented on or reported on in the public media at the risk of being cited for contempt of court.

213. The Special Rapporteur is aware that national security, "trade secrets", sub judice or other defences against reasonable requests for information will surely continue to arise. However, the Special Rapporteur must stress that Governments may only use national security defences in conformity with the relevant derogation or limitation clauses of international human rights instruments. "Trade secrets", sub judice and other defences must be reviewable to ensure that the public's right to information is not unduly restricted.

214. Even if a plausible national security defence could be presented, the Special Rapporteur considers that there are circumstances where it is not acceptable. For example, individuals, communities and neighbouring countries must have information regarding specific hazardous materials and conditions at industrial facilities located in their vicinity in order to undertake disaster planning and response wherever there is a danger of large-scale industrial accidents like Chernobyl and Bhopal. Individuals, communities and neighbouring countries must have information regarding the full range of environmental consequences of proposed development projects in their regions in order to participate meaningfully in decisions that could adversely affect them due to increased pollution, loss of land base, dislocation and other impacts. Individuals, communities and neighbouring countries must have

information regarding pollutants and wastes associated with industrial and agricultural processes. In these circumstances there is a clear duty to disclose.

215. The right to information not only protects individuals and groups, but also Governments themselves. In this light, the Special Rapporteur is aware that in the context of human rights and the environment, the right to information may also be considered a right of States vis-à-vis other States or of States vis-à-vis transnational corporations. In this context a State's access to information would enable it to transmit the information to its residents and to otherwise protect the human rights of those residents. The Special Rapporteur stresses that the right of States aspect of the right to information is particularly important regarding the issue of toxic waste disposal, the use of nuclear power and disposal of nuclear wastes, and the production or use of toxics because of the human hazards these matters pose.

216. The Special Rapporteur has reviewed information showing that many conflicts have arisen between Governments because Governments of developed countries, transnational enterprises operating from the developed countries or international development banks do not provide full disclosure of potential dangers to human beings or to the environment for contemplated activities. Under these circumstances, individuals and groups have limited recourses because their own Governments may not have the relevant information.

H. Popular participation

217. The right of popular participation in its various forms ranks high in importance for promoting and protecting human rights and the environment. The basic right to popular participation is provided for in article 21 of the Universal Declaration of Human Rights and a number of international instruments. The United Nations system has long recognized the importance of popular participation in the protection of the environment, especially evident in the 1972 Stockholm Declaration, the 1975 United Nations work on popular participation in development 126/, the 1992 Rio Declaration and Agenda 21, and 1993 Vienna Declaration and Programme of Action.

218. The Special Rapporteur stresses that popular participation is closely related to the rights to education and information: without education about the environment and without access to relevant information on issues of concern, popular participation is meaningless.

219. in the United Nations the issue of popular participation became prominent in the context of the right to development 127/. After the International Seminar on Popular Participation (Ljubljana, 1982), the issue of popular participation has become an essential feature of a wide range of human rights concerns. The General Assembly asked the Commission on Human Rights to address popular participation in a broader context 128/, reflected in the Commission's work. 129/ Popular participation is a prominent feature of the World Charter for Nature and the Rio Declaration on Environment and Development (see supra, chap. II, sect. C).

220. It is important that participation in the environmental context be meaningful - a question of quality of the participation and whether it is

timely. Environmental destruction is not easily undone. People must be able to prevent environmental harm. As a minimum, people have the right to receive notice of and to participate in any significant decision-making regarding the environment, especially during the process of environmental impact assessments and before potential damage is done. Participation must include the right to oral and written commentary. People must also be able to participate in follow-up projects and in ongoing monitoring of environmental situations. To prevent damage or to provide relief if damage has already been done, people must also have the right to seek effective remedy in courts, tribunals or other forums for violations, including violations arising from a failure to allow effective participation.

221. Although many people are prevented from participating in decisions, there is a growing national and international trend, including at the international funding institutions, to allow the participation of individuals and groups in all stages of activities involving the environment. The environmental impact assessment process has been effective in providing for meaningful public participation. The United Nations Environment Programme has prepared a set of goals and principles on environmental impact assessment with a heavy emphasis on public participation. 130/

222. The Special Rapporteur has been presented with a variety of means by which participation in environmental decision-making is unduly restricted. A denial of standing in the process of environmental impact assessments and in judicial action has been a particularly effective means to prevent meaningful public participation in environmental concerns, first, because it denies the ability to prevent harm and second because it denies the possibility of reparations, compensation or other remedies. Groups or individuals may be denied standing because they are not considered to be sufficiently affected or injured by actual or proposed activities. Persons and groups from one country may not have standing in another country where the environmental problem arises that affects them. International forums have interpreted standing broadly. For example, in cases with environmental concerns, the Inter-American Commission on Human Rights has allowed "interest group" or "interested citizen" actions; the Council of Europe has required actual victims or relatives of actual victims, although the victim may be a group or non-governmental organization. The United Nations Human Rights Committee allows collective communications but has implied that each of the individuals of the group must be able to allege essentially the same injury. 131/ In the view of the Special Rapporteur, standing must always be broadly granted to foster public participation and to better protect all human rights in an environmental context.

223. The question of popular participation and the environment has special relevance in conditions of extreme poverty. The extremely poor suffer most from environmental hazard, yet they are rarely included in decision-making processes, monitoring or follow-up. They usually have no means to carry out judicial actions. States and the international community should ensure that all affected persons, regardless of their economic status, are included in decision-making and related activities and that they have the means to take legal recourses.

I. Freedom of association

224. The right to freedom of association forms a crucial element of effective popular participation in matters that relate to the environment and in general. Article 20 of the Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights establish freedom of association and assembly as fundamental human rights. In the environmental context these rights encompass the freedom to associate freely and peacefully with others to protect the environment, to protect the rights of others affected by environmental harm, and to take collective action in support of environmental causes.

225. As noted in chapter 29 of Agenda 21, freedom of association has particular relevance in the case of workers. The right to organize plays a critical role in workers' ability to protect and enforce their right to environmental health and safety on the job. Outside of the trade union context, the right to association, in conjunction with the right to freedom of expression, is possible for groups of individuals, such as non-governmental organizations, to mobilize the human and financial resources necessary to effectively address environmental problems (see chap. 27 of Agenda 21).

J. Cultural rights

226. The relationship between the deterioration of the environment and the enjoyment of cultural rights has several dimensions, indissolubly linked to the fundamental rights to education, information, freedom of expression, assembly and association, and the right to take part in public life and in decision-making. Cultural rights may equally well be considered from the standpoint of the right to leisure, provided for in a number of international human rights instruments, which leads to the right to the conservation of unique sites constituting the universal heritage.

227. Nearly 20 years ago, the Director-General of UNESCO made the following reflection on the relationship between culture and man's environment: 132/

> "... The deterioration of the natural environment and, even more, the alienation from this environment of an increasingly large number of people in the industrialized countries are direct and potentially very serious blows to culture itself. What idea can man form of purity unless he initially receives a spontaneous impression of purity from the air he breathes, the river where he bathes, the sky on which he gazes or from all that goes to make up his life at its most instinctive? What secrets can he hear murmured within him if silence without is denied to him? How can he meditate amid tumult? How can he find himself in a continual flux of movement without pattern? And to what discoveries can he direct his steps outside himself, what marvels can he look for in a world where so many animal species are vanishing, where plant life is retreating further and further from our dwellings, and where man is increasingly confronted with the products and the signs of his oppressive presence?"

228. The importance of protecting cultural property and the specific role of UNESCO in this sphere may be recalled at this point. The Constitution of

UNESCO states that "since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed" and that peace must be founded upon the intellectual and moral solidarity of mankind.

229. On 14 November 1970, the General Conference of UNESCO at its sixteenth session adopted the "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property." According to this Convention, the term "cultural property" means "property, which on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science". Article 1 of this instrument lists the categories of cultural property protected.

230. On 16 November 1972, another convention saw the light of day under the auspices of UNESCO; it relates to the "protection of the world cultural and natural heritage". It came into force on 17 December 1975; it codifies UNESCO's practice in this area and describes methods of cooperation for safeguarding the natural heritage which is increasingly threatened by the deterioration of the environment.

231. The Convention covers the cultural and natural heritage of outstanding universal value from the point of view of history, art, science or aesthetics. It establishes two fundamental principles: each State party undertakes to ensure the conservation of the world heritage situated on its territory; and States parties recognize that the international community must cooperate to protect and conserve this heritage. For this purpose, each State party is required to draw up an inventory of property forming part of the cultural and natural heritage situated on its territory and suitable for protection. A World Heritage Committee, set up under the Convention, is responsible for designating the property which is part of the world heritage and disseminating, when circumstances demand, a "List of World Heritage in Danger", so as to protect that property against disappearance, deterioration, destruction, abandonment, natural catastrophes or the outbreak or threat of an armed conflict (art. 11).

232. According to the Convention, "deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world". The States parties, out of respect for the sovereignty of the States in whose territory the cultural and natural heritage is situated, recognize that it constitutes a universal heritage, and undertake to protect, conserve and preserve it and not to take any deliberate measures which might damage this heritage directly or indirectly (see art. 6).

233. The right to culture and the other related rights recognized in a number of international instruments entail the right of everyone "freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and benefits" (Universal Declaration of Human Rights, art. 27), and "the right and the duty" of every people "to develop its culture," since each culture has "a dignity and value which must be respected and preserved" (Declaration of the Principles of International Cultural Cooperation, art. 1). 133/

234. In this context, development models which are extroverted or exclusively growth-oriented, carry the risk of acculturation, or even endangering cultures closely linked to a form of existence of national, ethnic, religious or linguistic minorities or of indigenous peoples. While the Special Rapporteur is aware of the fact that traditional practices which run counter to progress and affect human rights should be eradicated, she also considers that sustainable development only has a real sense in so far as it takes account of the aspirations of the individuals, groups and peoples concerned, and preserves their cultural identity and their means of existence.

CHAPTER VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

235. The problems of the environment are no longer being viewed exclusively from the angle of the pollution affecting the industrialized countries but seen rather as a worldwide hazard threatening the planet and the whole of mankind, as well as future generations. There is now a universal awareness of the widespread, serious and complex character of environmental problems, which call for adequate action at the national, regional and international levels.

236. The realization of the global character of environmental problems is attested to by the progress made in understanding the phenomena that create hazards for the planet, threaten the living conditions of human beings and impair their fundamental rights. These phenomena concern not only the natural environment (the pollution of water, air and atmosphere, seas, oceans and rivers; depletion of the ozone layer; climatic changes) and natural resources (desertification, deforestation, soil erosion, disappearance of certain animal species; deterioration of flora and fauna; exhaustion of non-renewable resources, etc.) but also populations and human settlements (housing, town planning, demography, etc.) and the rights of human beings (the human environment, living, working and health conditions; conditions for the exercise and enjoyment of fundamental rights).

237. By means of a global approach to these phenomena that takes in their multidimensional aspects, including their human aspects, it has become possible to move from environmental law to environmental rights, proclaimed by the 1972 Stockholm Declaration which states in its Principle 1 that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".

238. Since then, a large number of national, regional and international instruments have been drawn up which have strengthened the legal bases of environmental rights and stressed the intrinsic link that exists between the preservation of the environment, development and the promotion of human rights.

239. The Special Rapporteur has endeavoured, within the limits of the means at her disposal, to collect the basic legal instruments underpinning environmental rights and to clarify the relationship existing between the preservation of the environment and human rights. She has received from governments, the United Nations bodies concerned, specialized agencies and intergovernmental and non-governmental organizations, studies, communications, information and comments that have proved very useful for her report.

240. This research has revealed universal acceptance of the environmental rights recognized at the national, regional and international levels.

241. At the national level, over 60 constitutions brought to the attention of the Special Rapporteur contain specific provisions relating to the protection of the environment; some of them recognize explicitly the right to a

satisfactory environment, entailing corresponding duties towards the State and its institutions and rights and/or obligations for individuals and organs of society. An increasing number of national legislations have developed the framework of laws and regulations needed to ensure the right to a satisfactory environment and have spelt out the substantive content of that right and the ways and means whereby it may be exercised, including remedies to safeguard its effective enjoyment and afford guarantees for its implementation. A few constitutions provide, in the section dealing with human rights and fundamental freedoms, for the right to a healthy environment and the guarantees attaching thereto, including in some cases the right of recourse and petition. Some countries have provided for the punishment of offences against the environment and have introduced into national legislation the principle of compensation for the victims as well as reparation of the damage. There is moreover a trend towards developing and strengthening the means of preventing damage to the environment.

242. At the regional and universal level, recognition of the right to a satisfactory environment as a human right is reflected both in the related normative developments and in the "environmental" concern that informs the activities of human rights bodies. Although only a few instruments of a binding legal character have established a direct link between the environment and human rights, the regional and international human rights bodies are developing a practice whereby the procedural bases for enforcing the right to a satisfactory environment are becoming more firmly established and the validity of complaints of human rights violations based on ecological considerations is being recognized. These bodies do not dismiss out of hand the idea that ecological factors may hinder the enjoyment of the human rights enshrined in the instruments in their care. On the other hand, those same bodies and more particularly the European Court of Human Rights have, in certain cases, legitimated restrictions on the use of private property in the public interest based on concern for the need to preserve the environment.

243. This review of the activities of human rights bodies and other fields relevant for the study has made it possible to outline the scope of environmental rights. Many human rights are suited to being applied from an ecological perspective, whether those rights are political, civil, social, economic or cultural, and whether they are exercised individually or collectively. The Special Rapporteur has drawn up a list of those rights, albeit a non-exhaustive one and has attempted to assess the effects of the environment or enjoyment of those rights.

244. Her analysis of the ways in which the right to a satisfactory environment relates to other human rights gave the Special Rapporteur occasion to stress the close link existing between that right and the right to development. The fact is that the affirmation of "ecological rights" attaching to recognition of the right to a satisfactory environment cannot be understood if we disregard the problems bound up with development both nationally and internationally. It also rests on the indivisibility and interdependence of all human rights.

245. In this context, it is important to bear in mind the consensual aspects which form the basis of the world partnership for sustainable development and serve to reaffirm the principle of the right of peoples to self-determination,

the duty to protect the environment and natural resources of peoples suffering oppression, domination and occupation, and the sovereign right of States to exploit their own resources in accordance with their environmental policy, while ensuring that the activities conducted by them or under their supervision do not damage the environment.

246. The world partnership establishes a responsibility which, while shared is differentiated on the basis of the "polluter pays" principle, the special responsibility of industrialized countries, and the problems and needs of developing countries. It also calls for the channelling of new and additional resources to the developing countries and the equitable settlement of those countries' foreign debt. The United Nations General Assembly has called for innovative measures in this respect, such as the conversion of debt into shareholdings and into ecological investment. It has also been generally recognized that the examination of national and international strategies for sustainable and ecologically sound development should not be used as a pretext for imposing new conditions on the granting of funding or development aid or to create unjustified trade barriers.

247. At the same time, the worldwide partnership creates solemnly acknowledged obligations towards present and future generations which involve corresponding rights for the recipients - individuals, groups and peoples. The State and other parties to development, including the international agencies, have the duty, among others, to refrain from activities damaging to the environment and to take positive measures for preserving it. It is recognized in particular that there is a need for studies of the impact of development projects on the environment and on the fundamental rights of the populations concerned, who are entitled to be duly informed of, and closely associated with, the decision-making process, either directly or through their freely elected representatives. Finally, it is acknowledged that vulnerable groups should be protected from the negative consequences of the application of structural adjustment programmes and of economic reforms undertaken by many countries. The Special Rapporteur notes with interest the significant changes beginning to occur within the international financing agencies, with a view to assuming responsibility for these questions.

248. Environmental damage has direct effects on the enjoyment of a series of human rights, such as the right to life, to health, to a satisfactory standard of living, to sufficient food, to housing, to education, to work, to culture, to non-discrimination, to dignity and the harmonious development of one's personality, to security of person and family, to development, to peace, etc.

249. In this context, it should be stressed how vulnerable certain peoples, populations, groups or categories of persons are to ecological hazards and natural disasters whether caused by man or generated by a state of war and conflict. The Special Rapporteur has pointed out that the poor and disadvantaged, minority groups, women, children, migrant workers and their families, refugees and displaced persons are generally those most affected and least protected. The transfer of toxic substances and waste to the developing countries also gives cause for serious concern.

250. The Special Rapporteur noted indigenous peoples' special ties with the land and the environment, and their particular vulnerability to ecological

hazards. She stresses the need for effective protection of their rights and calls for the rapid adoption of the draft declaration finalized by the Working Group on Indigenous Populations.

251. Conversely, human rights violations in their turn damage the environment. This is true of the right of peoples to self-determination and their right to dispose of their wealth and natural resources, the right to development, to participation, to work and to information, the right of peaceful assembly, freedom of association, freedom of expression, etc.

252. In the light of the foregoing, the Special Rapporteur is of the view that effective implementation of the right to a satisfactory environment cannot be dissociated from the twinned efforts to preserve the environment and ensure the right to development. Nor can it be achieved without resolute action to ensure the enjoyment of all human rights.

253. In order to give practical expression to the right to a satisfactory environment, there is a need for development strategies that are directed towards the implementation of a substantive part of that right (the right to development, to life, to health, to work, etc.). These must go hand in hand with the promotion of the related procedural aspects (due process, right of association and of assembly, freedom of expression, right of recourse, etc.).

254. Implementation of the right to a satisfactory environment calls for commitment and participation on the part of everyone at all levels, beginning with the family unit, where environmental education starts. It depends on the existence of effective national legal remedies; local administrative or other courts, national institutions and ombudsmen provide guarantees of the protection of this right. The Special Rapporteur notes with satisfaction the development of such recourse guarantees in many countries.

255. The right to a satisfactory environment is also a right to prevention which gives a new dimension to the right to information, education and participation in decision-making. The right to restitution, indemnification, compensation and rehabilitation for victims must also be seen from the angle of the special responsibility that would follow from the absence of preventive measures.

256. The right to a satisfactory environment is also a right to the "conservation" of nature for the benefit of future generations. This "futuristic" dimension restores to human rights their original purpose, as embodied in the Charter of the United Nations and the Universal Declaration of Human Rights of 1948. It foreshadows a "new public order" of human rights which would set acceptable limitations on those rights in the general interest while entailing corresponding duties on the part both of the public authorities and of individuals, associations and other components of civil society.

257. To conclude her study, the Special Rapporteur wishes to cite the argument of Mr. A. Kiss that international law must be based on values, the fundamental values of this century being human rights and the environment. She shares this view and notes that these values are intrinsically bound up with development seen as a worldwide phenomenon resting on various pillars such as

peace, equity, progress, social justice and participatory democracy at all levels, including the international level. As recalled by the Secretary-General in May 1994 when he presented his agenda for development which covers the five dimensions of peace, the economy, the environment, social justice and democracy, "without peace, human energies cannot be productively employed; without economic growth, there can be no sustained, broad-based improvement in material well-being; without protection of the environment, the basis of human survival will be eroded, without societal justice, mounting inequalities will threaten social cohesion; without political participation in freedom, development will remain fragile and perpetually at risk".

B. Recommendations

258. The "human rights" component of the right to a satisfactory environment lends itself, however, to immediate implementation by various bodies, under existing mechanisms for following up regional and international human rights instruments. The practice being developed within those bodies is decisive and should bring into sharper focus the content of the right to a satisfactory environment, the ways and means of implementing it, and the related procedural aspects.

259. The Special Rapporteur recommends that the various human rights bodies should examine, in the various fields of concern to them, the environmental dimension of the human rights under their responsibility. She suggests in particular that the following themes should be regularly examined by the bodies, committees, working groups and special rapporteurs concerned:

(a) Commission on the Status of Women and Committee on the Elimination of Discrimination against Women: rights of women and the environment, with emphasis on factors giving rise to de facto discrimination and impeding participation in the decision-making process;

(b) Committee on the Rights of the Child: vulnerability of children in the face of ecological hazards; protection of children against environmental degradation with particular reference to the phenomenon of street children; education of children with a view to the preservation of the environment;

(c) Committee on the Elimination of Racial Discrimination - CERD: racial discrimination and the environment and, more particularly, the tendency for disadvantaged and marginalized groups to be more exposed to environmental hazards. In addition, the Committee could establish appropriate case law for the treatment of complaints addressed to it in conformity with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination;

(d) Committee on Economic, Social and Cultural Rights. The Committee could frame general comments with a view to defining the interaction of the environment with the human rights under its responsibility. It could moreover examine, in the context of ongoing studies, the possibility of including communications on ecological matters in any procedure established by means of a protocol for the treatment of complaints by individuals or States;

(e) Human Rights Committee. The Committee could expand its general comment on the right to life in order to include environmental concerns or formulate a general comment defining the links existing between civil and political rights and the environment. Moreover, it should be able, through dealing with complaints, to establish case law that will accommodate environmental concerns;

(f) Working Group on the right to development: environment, debt and development; development, environment and the funding institutions; participation by the people in activities for development and the environment, structural adjustment programmes, impact on the environment and underprivileged populations and groups;

(g) Working Group entrusted with the preparation of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. The group could contemplate the inclusion of specific provisions relating to rights and duties in respect of the preservation of the environment;

(h) The working groups, special rapporteurs on thematic questions and country rapporteurs could also, within the areas covered by their mandates, consider the impact of the environment on the enjoyment of human rights and possible measures for correcting situations where rights violations have been observed and help the victims to incorporate them into their rights, particularly with regard to restitution, compensation or rehabilitation.

260. The interest shown in the impact of the environment on the enjoyment of human rights means that human rights bodies are already in demand and are increasingly being called on to pronounce on the question. In order to avoid disparate practices and to promote the development of an overall, integrated and coordinated view in the approach to the various phenomena which will be dealt with in an inevitably sectoral way by existing bodies, given their respective areas of competence, it is suggested that:

A coordination centre should be set up to deal with the question within the United Nations Centre for Human Rights;

A special rapporteur of the Commission on Human Rights should be appointed with a mandate similar to that generally given to special rapporteurs on thematic questions;

A seminar should be held under the auspices of the Centre for Human Rights to help formulate practical recommendations on the way in which the right to a satisfactory environment could be rationally incorporated into the activities of human rights bodies.

261. In submitting the draft declaration of principles on human rights and the environment contained in the annex to this report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, the Special Rapporteur expresses the hope that the draft will help the United Nations to adopt, in the course of the present United Nations

Decade of International Law, a set of norms consolidating the right to a satisfactory environment - defined as an integral part of the world partnership for peace, development and progress for all.

Notes

1/ "Immediately after the Stockholm Conference, perception of environmental problems was limited to a specific geographical area, the industrialized countries, and reduced to the simplest of terms, pollution". Mohammed Sahnoun, "Environnement et développement", Revue algérienne des relations internationales, No. 8, 1987, OPU, Algiers.

2/ As regards this notion of "sustainable development", see the work of the World Commission on Environment and Development, General Assembly resolution 42/186 dated 11 December 1987 and entitled "Environmental Perspective to the Year 2000 and Beyond".

3/ See also the report prepared by the Secretary-General in accordance with Commission on Human Rights resolution 1989/42 (E/CN.4/Sub.2/1989/3).

4/ See annexes to this report: II (Meetings with, and contributions of, experts and non-governmental organizations) and III (Developments in national legislation and practices, essentially composed on the basis of replies received from Governments).

5/ "La protection de l'environnement", Annuaire français de droit international, 1991, p. 1093.

6/ See Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No. E.73.II.A.14).

7/ General Assembly resolution 2997 (XXVII).

8/ General Assembly resolution 3281 (XXIX) of 12 December 1974.

9/ "By stating that economic, political and other relations must be governed in particular by the principle of respect for human rights and fundamental freedoms, this instrument asserts the need to work towards establishing the essential conditions for protecting, preserving and improving the environment". Andrzej Makarewiez, "La protection internationale du droit à l'environnement", Environnement et droits de l'homme, edited by Pascale Kromarek, UNESCO, 1987.

10/ See also General Assembly resolution 36/43, dated 19 November 1981, in which the General Assembly endorses the Global Strategy for Health for All by the Year 2000 adopted by the World Health Assembly on 22 May 1981, and General Assembly resolution 37/137 of 17 December 1982 relating to the publication and updating of a list of products harmful to health and the environment.

11/ Brundtland Report, "Our Common Future", UNEP/GC.14/13.

12/ Report of the South Commission "The Challenge to the South", 1990, Economica, p. 228.

13/ "World Development Report 1992", World Bank, Washington 1992, p. 103.

14/ "Human Development Report 1993", Paris, Economica, data taken from box 1.2, p. 12.

15/ Mohammed Sahnoun, op.cit.

16/ E/CN.4/Sub.2/1992/16, para. 118, p. 32.

17/ E/CN.4/Sub.2/1991/17, pp. 36-50, especially paras. 124-166.

18/ EURODAD, "Target 92", 1991, p. 16.

19/ "The realization of the right to development", Consultation, Geneva, 8-12 January 1990, HR/PUB/91/2, 1991, para. 166, p. 48.

20/ See E/CN.4/Sub.2/1992/7/Add.1 and E/CN.4/Sub.2/1993/7.

21/ A/CONF.151/PC/100/Add.1, para. 3.

22/ A/CONF.151/4(Part III), chap. 23, paras. 23.1 and 23.2.

23/ Ibid.

24/ A/CONF.157.23, Sect. I, para. 8.

25/ E/CN.4/Sub.2/1990/12, para. 33 and note 9; E/CN.4/Sub.2/1991/8, paras. 23-30; E/CN.4/Sub.2/1992/7, paras. 19, 94-95, 99; E/CN.4/Sub.2/1992/7/Add.1; E/CN.4/Sub.2/1993/7, paras. 29-32, 69, 89-90, 126.

26/ Cited in Mario Ibarra, "Traditional practices in respect of the sustainable and environmentally sound self-development of indigenous people" (E/CN.4/Sub.2/1992/31/Add.1), para. 94.

27/ J. Uranavi, Statement on behalf of the International Work Group for Indigenous Affairs, 1985.

28/ E/CN.4/1989/22, annex III C, para. 3.

29/ Ibid, annex III A, pp. 27-28.

30/ The realization of the right to development, Global Consultation on the Right to Development as a Human Right, United Nations publication, (HR/PUB/91/2).

31/ The subject of treaties, arguments and other constructive arrangements between States and indigenous populations is now under review by the Sub-Commission and its Special Rapporteur, Mr. Miguel Alfonso Martínez.

32/ International Labor Office Fact Sheet, International Labor Standards, Washington Branch, January 1991.

33/ Hernán Santa Cruz, Racial Discrimination, United Nations publication, Sales No. E.71.XIV.2, 1971.

34/ José Martínez Cobo, "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add. 1-4). Addendum 4 containing the conclusions and recommendations, issued as a United Nations publication, Sales No. E.86.XIV.3.

35/ E/CN.4/Sub.2/1992/33, annex I.

36/ E/CN.4/Sub.2/1993/7, para. 89.

37/ E/CN.4/Sub.2/1992/31 and Add.1.

38/ E/CN.4/Sub.2/1992/7.

39/ Report of the Human Rights Committee (A/45/40), vol.II, annex IX A.

40/ Case 7615 of 5 March 1985, in the annual report of the Inter-American Commission on Human Rights, 1984-1985 (OEA/Ser.L/V/II.66, doc. 10 rev.1), referred to by the Special Rapporteur in E/CN.4/Sub.2/1992/7, para. 94 and E/CN.4/Sub.2/1993/7, para. 69.

41/ Confederación de Nacionalidades Indígenas de la Amazonia Ecuatoriana, petition filed 25 June 1990 and now subject of in situ investigation by the Inter-American Commission, referred to by the Special Rapporteur in E/CN.4/Sub.2/1992/7, para. 95 and E/CN.4/Sub.2/1993/7, para. 69.

42/ Organization of American States, Treaty Series 36.

43/ OEA/Ser.L/V/II.62/doc.10 rev. 3 of 29 November 1983 and OEA/Ser.L/V/II.62/doc. 26 of 16 May 1994.

44/ Inter-American Commission, ibid., pp. 112-118.

45/ Ibid.

46/ Decision of the Third Agrarian Court of the District of Antioquia, Colombia (24 February 1993).

47/ Supreme Court reports of 31 May 1990.

48/ Reports of a 1994 session in New Mexico, USA, and a 1993 session in Gland, Switzerland, are available from the IUCN World Conservation Union.

49/ See A/48/269, sect. II.

50/ Letter DDN/JUR/89/1405 AAB/VR of 29 December 1989.

51/ Above-mentioned reply to the Special Rapporteur and document DOM/DIRHPG/AAB/RAF entitled "Protection of the natural environment in time of armed conflict: an overview of the state of international humanitarian law and of the position of the International Committee of the Red Cross", Geneva, 7 August 1991.

52/ See in particular:

- Antoine Bouvier, "La protection de l'environnement naturel en période de conflit armé", Revue internationale de la Croix-Rouge, No. 792, 1991;

- Philippe Antoine, "Droit international humanitaire et protection de l'environnement en cas de conflict armé"; Adams Roberts "La destruction de l'environnement pendant la guerre du Golfe de 1991"; and Antoine Bouvier "Travaux récents relatifs à la protection de l'environnement en periode de conflit armé", Revue internationale de la Croix-Rouge, No. 798, 1992;

- Ksentini F. Zohra, "Droit internationale humanitaire et protection des populations, de leurs biens et de l'environnement", Revue algérienne des relations internationales, No. 23, 1993.

53/ E/CN.4/Sub.2/1990/12, para. 5, and E/CN.4/Sub.2/1993/7, paras. 113-115.

54/ See in particular the Charter of the United Nations, Articles 1, 2, 55 and 56.

55/ General Assembly resolution 3384 (XXX) of 10 November 1975.

56/ General Assembly resolution 39/11 of 12 November 1984.

57/ Work on this topic began in 1978. Mr. Robert Quentin-Baxter was Special Rapporteur from 1978 until 1985. In 1985, Mr. Julio Barboza was appointed Special Rapporteur.

58/ E/1994/16.

59/ A/45/696/Add.1, annex, second preambular paragraph.

60/ "Spotlight Tchernobyl", Bulletin of the League of Red Cross and Red Crescent Societies, January 1991.

61/ A.E. Fry: "International Transport of Hazardous Waste", Environmental Science and Technology, 1989, p. 509.

62/ H. Yakowitz: "Global Hazardous Transfers", Environmental Science and Technology, 1989, p. 540.

63/ Ibid.

64/ S. Rublack: "Fighting transboundary waste streams: Will the Basel Convention help?", Verfassung und recht in ubersee 1989, p. 367.

65/ C. Hitz and J.R. Ehrnefeld: "Transboundary Movement of Hazardous Wastes. A Comparative Analysis of Policy Options to Control the International Waste Trade", Environmental Affairs, Vol. 3, Winter 1991, p. 29.

66/ Pambou-Tchivounda: "L'interdiction de déverser des déchets toxiques dans le tiers-monde; le cas de l'Afrique", Annuaire français de droit international, 1988, p. 709.

67/ Resolution 43/75 - entitled "Dumping of radioactive wastes".

68/ See Principle 21 of the Stockholm Declaration; General Assembly resolution 36/166 dated 16 December 1981; and the "Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes", UNEP/GC/DEC/14/30.

69/ A/CONF.151.4 (Part III), chap. 24.

70/ See "Women and the environment", Report of the Secretary-General of the United Nations to the thirty-sixth session of the Commission on the Status of Women (E/CN.6/1992/9).

71/ Ibid., p. 7.

72/ "Human development report", Economica, 1993, pp. 3 and 27. See also the publications of the Interparliamentary Union, including: Distribution of seats between men and women in national parliaments. Statistical data from 1945 to 30 June 1991, Series "Reports and documents", No. 18, Geneva, 1991; Women and political power. Survey carried out among the 150 national parliaments existing as of 31 October 1991, Series "Reports and documents", No. 19, Geneva, 1992.

73/ E/CN.6/1990/2, subsequently published under the title Women in Politics and Decision-making in the Late Twentieth Century - A United Nations Study, Martinus Nijhof publishers, 1992.

74/ UNICEF, The state of the world's children 1994.

75/ See the reports of the Subcommission's Working Group on Contemporary Forms of Slavery.

76/ UNICEF, op. cit. See also: UNICEF and UNEP, 1990: Children and the environment, UNEP, Nairobi and UNICEF, New York; UNICEF, 1989: Children and environment: a UNICEF strategy for sustainable development, document for the 1989 Executive Board session (E/ICEF/1989/L.6); Report of the Symposium "Women and children first", Geneva, 27-30 May 1991, organized under the auspices of UNCED, UNFPA, the Government of Denmark and UNICEF.

77/ Study by Mr. Leandro Despouy, Special Rapporteur of the Sub-Commission, United Nations, 1993 (United Nations publication, Sales No. E.92.XIV).

78/ Extract from a speech given by the Deputy Chairperson of Disabled Peoples' International, Mr. Kalle Konkkola, at the Symposium on Environment and Disability, Rio de Janeiro, June 1992.

79/ See E/CN.4/Sub.2/1993/7, paras. 101-106.

80/ The Convention relating to the Status of Refugees, which entered into force on 22 April 1954, defines a refugee as one who flees his country of origin due to a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".

81/ The Protocol relating to the Status of Refugees, which entered into force on 4 October 1967, incorporates the Convention definition of refugee without restrictions as to date or geography.

82/ The OAU Convention governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 states that the term "refugee" includes every person who flees his or her country of origin "owing to external aggression, occupation, foreign domination, or events seriously disturbing public order".

83/ The Cartagena Declaration on Refugees of 22 November 1984 defines refugees as "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, international conflicts, massive violations of human rights or other circumstances which have disturbed the public order".

84/ See The State of the World's Refugees: The Challenge of Protection, UNHCR, Penguin Books, 1993.

85/ E/CN.4/1993/35, annex and E/CN.4/1994/44 and Add.1.

86/ See Sadruddin Aga Khan, Legal Problems relating to Refugees and Displaced Persons, 149 Recueil des Cours 287 (1976-I).

87/ UNHCR, Note on International Protection submitted to the Executive Committee of the High Commissioner's Programme (A/AC.96/199), 1992; see also statement by the United Nations High Commissioner for Refugees at the United Nations Conference on Environment and Development, Rio de Janeiro, 10 June 1992.

88/ See World Development Report, World Bank, and Human Development Report 1993, UNDP, op. cit.

89/ See Sub-Commission resolution 1991/28 dated 29 August 1991; preliminary report by Mr. Al-Khasawneh and Mr. R. Hatano on "The human rights dimensions of population transfer, including the implantation of settlers" (E/CN.4/Sub.2/1993/17); working paper by Mrs. Mbonu (E/CN.4/Sub.2/1991/47).

90/ See article 52 of the Vienna Convention on the Law of Treaties.

91/ CCPR/C/21/Rev.1, pp. 4-5.

92/ Taken from the comments transmitted by Mr. Galicki (Poland) to the Special Rapporteur.

93/ R.G. Ramcharan, The Right to Life, The Hague, 1983, pp. 310-311.

94/ In "The parallel evolutions of international human rights protection and of environmental protection and the absence of restrictions upon the exercise of recognized human rights", Revista del Instituto Interamericano de Derechos Humanos vol.13, 1991, p.50.

95/ Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), Principle 1.

96/ See E/CN.4/Sub.2/1992/7, paras. 73-74.

97/ See E/CN.4/Sub.2/1992/7, paras. 94-95.

98/ Case No. 7615 of 5 March 1985, in the annual report of the Inter-American Commission on Human Rights, 1984-1985 (OEA/Ser.L.V/II/66).

99/ See Joint IMO/FAO/UNESCO/WMO Group of Experts on the Scientific Aspects of Marine Pollution, GESAMP (A/7750) (1969); Convention for the Prevention of Marine Pollution from Land-based Sources (Paris, 1974); Convention for the Protection of the Mediterranean Sea against Pollution, art. 2 (Barcelona 1976); Recommendation on Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution (OECD, 1977);

Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, art. 2 (Abidjan, 1981); United Nations Convention on the Law of the Sea, art. 1 (4) (1982).

100/ See background paper on "Health, the Environment and Sustainable Development", prepared for the Commission on Sustainable Development by the World Health Organization, Task Manager on Health, March 1994, p. 1.

101/ See E/CN.4/Sub.2/1993/7, para. 98.

102/ Conference held in Noordwijk, The Netherlands, 22-23 March 1994. See E/CN.17/1994/12.

103/ See WHO background paper cited at note 95 supra.

104/ See Asbjørn Eide, Right to Adequate Food as a Human Right, Study Series No. 1, United Nations publication, Sales No. E.89.XIV.2, 1989.

105/ Some of the most significant ones are the Chemicals Convention (No. 170, 1990); the Safety and Health in Construction Convention (No. 167, 1988); the Asbestos Convention (No. 162, 1986); Occupational Safety and Health Convention (No. 155, 1981) the Working Environment (Air Pollution, Noise and Vibration) Convention (No. 148, 1977); the Occupational Cancer Convention (No. 139, 1974); and the Benzene Convention (No. 136, 1971).

106/ See E/CN.4/Sub.2/1993/15, section II.

107/ See E/CN.4/Sub.2/1992/15, paras. 62-65.

108/ E/1992/23-E/C.12/1991/4, annex III. The Special Rapporteur on the right to adequate housing shares the Committee's views in this regard. See E/CN.4/Sub.2/1993/15, para. 90.

109/ Revised guidelines regarding the form and contents of reports to be submitted by States parties under arts. 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (E/1991/23-E/C.12/1990/8, annex IV). The Committee's Guidelines on State reporting and its General Comment No. 4 stand as useful examples of how the United Nations and the international community as a whole might explicate the meaning of other human rights and enhance compliance with those rights.

110/ See E/CN.4/Sub.2/1992/15, para. 41; Commission on Human Rights resolution 1993/77 of 10 March 1993; analytical report of the Secretary-General on the practice of forced evictions (E/CN.4/1994/20).

111/ See the reports of the independent expert of the Commission on the right of everyone to own property, Mr. Luis Valencia Rodríguez (E/CN.4/1994/19 and Add.1 and E/CN.4/1993/15).

112/ The Committee on Economic, Social and Cultural Rights has addressed this concern in its General Comment No. 2 (1990). E/1990/23-E/C.12/1990/1, annex III.

113/ Both these texts protect the rights to freedom of opinion and expression, and to seek, receive and impart information through any media, regardless of national boundaries.

114/ Economic and Social Council resolution 756 (XXIX) of 21 April 1960.

115/ For example, in the Convention on the International Right of Correction (General Assembly resolution 630 (VII) OF 16 December 1952, annex), Governments in countries where incorrect, distorted or damaging information about other Governments has been disseminated are required to release a correcting statement (called a "communiqué") provided by the injured Government.

116/ UNESCO Convention of 16 November 1972.

117/ General Assembly resolution 37/7 of 28 October 1982.

118/ United Nations document A/46/632, 1991.

119/ Council Directive 90/313/EEC of 7 June 1990.

120/ For analysis of environmental information regarding the European system of human rights, see Stefan Weber, "Environmental Information and the European Convention on Human Rights", 12 Human Rights Law Journal 177 (1991).

121/ The Nordic Convention on the Protection of the Environment of 19 February 1979.

122/ Association of South-East Asian Nations Agreement on the Conservation of Nature and Natural Resources of 9 July 1985.

123/ Antarctic Protocol on Environmental Protection [signed?] 4 October 1991, [int'l cite].

124/ See, for example, article 198 of the United Nations Convention on the Law of the Sea of 10 December 1982 and art. 2 (a) of the Convention on Early Notification of a Nuclear Accident, Vienna, 26 September 1986.

125/ Report of the Committee on Information, Official Records of the General Assembly, Supplement No. 21 (A/45/21) p. 35.

126/ See Popular Participation in Decision Making for Development, United Nations publication, Sales No. E.75.IV.10 (1975).

127/ See, in particular, the United Nations Declaration on Social Progress and Development, General Assembly resolution 2542 (XXIV) of 11 December 1969, calling for Governments to adopt measures for participation of all elements of society in social and economic development schemes.

128/ General Assembly resolution 37/55 of 3 December 1982.

129/ See, for example, E/CN.4/1985/10 and Add.1 and 2; E/CN.4/1991/11.

130/ UNEP/Z/Ser.A/9 (1989).

131/ The Special Rapporteur has analysed many cases brought before national courts, European human rights bodies, the Inter-American Commission on Human Rights and United Nations human rights bodies. See E/CN.4/Sub.2/1992/7 and E/CN.4/Sub.2/1993/7.

132/ Report of the Secretary-General: "The balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural and moral advancement of humanity" (E/CN.4/1199), thirty-second session of the Commission on Human Rights, 1976, p. 37.

133/ Proclaimed by the General Conference of UNESCO at its fortieth session, on 4 November 1966. See "A Compilation of International Instruments", United Nations, Sales No. E.93.XIV.1, pp. 591-594.

Annex I

DRAFT PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Preamble

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Programme of Action of the World Conference of Human Rights, and other relevant international human rights instruments,

Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law,

Guided further by the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development,

Guided by fundamental principles of international humanitarian law,

Reaffirming the universality, indivisibility and interdependence of all human rights,

Recognizing that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment,

Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Deeply concerned by the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes,

Convinced that the potential irreversibility of environmental harm gives special responsibility to prevent such harm,

Concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations,

Declare the following principles:

Part I

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.

2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.

3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.

4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.

6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.

7. All persons have the right to the highest attainable standard of health free from environmental harm.

8. All persons have the right to safe and healthy food and water adequate to their well-being.

9. All persons have the right to a safe and healthy working environment.

10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.

11. (a) All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means.

(b) All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.

12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.

13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual and other purposes. This includes ecologically sound access to nature.

Everyone has the right to preservation of unique sites consistent with the fundamental rights of persons or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

Part III

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions or courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.

17. All persons have the right to environmental and human rights education.

18. All persons have the right to active, free and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.

20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV

21. All persons, individually and in association with others, have the duty to protect and preserve the environment.

22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.

These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, inter alia,

- Collection and dissemination of information concerning the environment;

- Prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;

- Public participation in environmental decision-making;

- Effective administrative and judicial remedies and redress for environmental harm or the threat of such harm;

- Monitoring, management and equitable sharing of natural resources;

- Measures to reduce wasteful processes of production and patterns of consumption;

- Measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and

- Measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.

23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

24. All international organizations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realized.

Annex II

MEETINGS WITH, AND CONTRIBUTIONS OF, EXPERTS AND NON-GOVERNMENTAL ORGANIZATIONS

1. The Special Rapporteur appreciates the strong interest of non-governmental organizations in her work and recognizes their many valuable contributions. Since the beginning of her mandate, representatives of many non-governmental organizations have met the Special Rapporteur, both individually and in groups, to express their views and to submit information.

2. The first group meeting with representatives of non-governmental organizations took place in August 1990 in Geneva when the Special Rapporteur met with representatives of more than 20 non-governmental organizations. At that session, facilitated by the Association des Consultants Internationaux en Droits de l'Homme in conjunction with the Sierra Club Legal Defense Fund, the Special Rapporteur was presented with situations that clearly illustrated to her the scope and depth of human rights violations arising from environmental problems and the human rights violations that cause environmental degradation.

3. A second major consultation took place in the spring of 1991 in two parts - the first in New York and the second in San Francisco. These sessions were funded by the Sierra Club Legal Defense Fund and assisted by the United Nations Centre for Human Rights Liaison Office in New York. At both these sessions the Special Rapporteur was accompanied by a staff member of the Centre for Human Rights. At the session in New York, the Special Rapporteur met with representatives of a number of non-governmental organizations and scholars in the field invited by the Natural Heritage Institute and the Four Directions Council.

4. In San Francisco, the Sierra Club Legal Defense Fund hosted a series of meetings from 28 April to 4 May 1991. During that period, the Special Rapporteur met with representatives of a number of organizations, and was also provided with documentation.

5. During the United Nations Conference on Environment and Development in Rio de Janeiro (1992), the Sierra Club Legal Defense Fund hosted a special session for the Special Rapporteur to enable her to meet with representatives of non-governmental organizations and individuals concerned with human rights and the environment from all parts of the world, to exchange views and to receive information.

6. During the World Conference on Human Rights in Vienna (1993), the Special Rapporteur met informally with a number of representatives from non-governmental organizations and experts.

7. In the course of these consultations with non-governmental organizations and experts, a number of substantive and structural concerns were expressed, including:

(a) Self-determination and the environment, especially with respect to the relationship between indigenous peoples and the massive export of natural resources and related ecological destruction;

(b) The lack of timely and relevant information about projects with severe environmental impacts;

(c) The imbalance between the resources available to groups interested in protecting human rights and the environment and the resources available to Governments and/or multinational enterprises;

(d) The human rights and environmental implications of large-scale disasters;

(e) The forced relocation of indigenous peoples and the subsequent ecological ruin of their traditional lands and sacred sites;

(f) The insufficient attention paid by international financial institutions to the special environmental needs of indigenous peoples and other vulnerable groups.

8. Following the Special Rapporteur's recommendation, contained in her 1993 report, that the Centre for Human Rights should convene an expert meeting on human rights and the environment, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1993/32 of 25 August 1993, invited the Secretary-General to organize such a meeting. Due to serious budgetary problems, the Secretary-General was unable to do so. However, the Sierra Club Legal Defense Fund, in association with the Société suisse pour la protection de l'environnement and the Association mondiale pour l'école instrument de paix, did sponsor the meeting, with the Centre for Human Rights providing the facilities and staff.

9. The expert meeting on human rights and the environment was held from 15 to 19 May 1994 at Geneva, and attended by the following experts:

James Cameron	Foundation for International Environmental Law and Development, London
David Goldberg	University of Glasgow; International Federation of Human Rights
Mario Ibarra	International Indian Treaty Council
Alexandre Kiss	Centre for Environmental Law; University of Strasbourg; European Council for Environmental Law; International Institute of Human Rights
Miloon Kothari	Centre for Housing Rights and Evictions; Habitat International Coalition
Meenakshi Raman	Consumers Association of Penang, Malaysia
Dinah Shelton	Santa Clara University
Anthony Simpson	Australian Conservation Foundation; International Commission of Jurists

Tobheka Thamage	Tsoga Environmental Resources Centre, South Africa
Antonio Augusto Cancado Trindade	Judge ad hoc, Inter-American Court of Human Rights; University of Brasilia
Lauri Adams David McDonald Adriana Fabra Aguilar Yves Ladore Karen Parker Neil Popovic	Sierra Club Legal Defense Fund

10. The following persons were also present: Mr. Philip Alston, Chairperson of the Committee on Economic, Social and Cultural Rights; Mr. Francis Deng, Representative of the Secretary-General on internally displaced persons; Mrs. Erica-Irene Daes, Chairperson of the Working Group on Indigenous Populations; Mr. Rajindar Sachar, Special Rapporteur on the right to adequate housing.

11. The following non-governmental organizations contributed to the meeting through representation, comments and/or recommendations: International Commission of Jurists, Disabled People's International, International Educational Development, Human Rights and Natural Heritage Institute.

12. As part of the Geneva expert session, the Special Rapporteur also met representatives of the World Health Organization, the International Committee of the Red Cross and the Geneva Liaison Office of the United Nations Environment Programme for an exchange of views regarding the draft declaration and other issues of common concern.

13. The Special Rapporteur also received information on human rights and the environment from non-governmental organizations during the course of debates on human rights and the environment in both the Sub-Commission and the Commission on Human Rights.

Annex III

DEVELOPMENTS IN NATIONAL LEGISLATION AND PRACTICES

A. Summary of constitutional provisions

In her two progress reports in 1992 (E/CN.4/Sub.2/1992/7 and Add.1) and in her report of 1993 (E/CN.4/Sub.2/1993/7), the Special Rapporteur noted that many countries had devoted constitutional provisions to the environment. The information reproduced below comprises the data included in the previous reports and those recently communicated to the Special Rapporteur.

1. Afghanistan

The 1990 Constitution proclaims that "the State shall adopt and implement the necessary measures for the protection of nature, natural wealth and reasonable utilization of natural resources, improvement of the living environment, prevention of pollution of water and air, and the conservation and survival of animals and plants (chap. II, art. 32).

2. South Africa

The Constitution of South Africa, which came into force on 27 April 1994, stipulates that "Every person shall have the right to an environment which is not detrimental to his or her health or well-being" (sect. 29).

3. Albania

The 1976 Constitution stipulates that "protection of the land, natural riches, waters and the atmosphere from damage and pollution is a duty of the State, of economic and social organizations and of all citizens" (chap. 1B, art. 20).

4. Algeria

The revised Constitution of 1989 stipulates, in essence, that every citizen has a duty to protect public property and the interests of the national community and to respect the property of others. Under article 17, public property encompasses the various components of the ecosystem (title I, chap. III, art. 63).

5. Germany

It is the responsibility of the legislature to protect the natural bases of man's existence, with due regard for prevention, the "polluter-pays" principle and cooperation, and to promote uniform ecological conditions of a high standard (text of 1990 supplementing the Basic Law, chap. VII, art. 34).

6. Angola

The 1992 Constitution stipulates that "the Government of Angola ... shall seek to protect and preserve the unique environmental heritage of Angola in order to ensure the quality of the human environment for all" (art. IX).

7. Bahrain

The 1973 Constitution proclaims that the State shall ensure the preservation and proper utilization of natural resources, which are its property (art. 11, second part).

8. Bolivia

The 1967 Constitution provides that "assets in the patrimony of the nation constitute inviolable public property, and it is the duty of every inhabitant ... to respect and protect that property" (art. 137).

9. Brazil

The 1988 Constitution attaches particular importance to protecting the environment and combating pollution in all its forms. Effective enjoyment of the rights listed in article 225 is accompanied by certain obligations on the part of the authorities, such as the imposition of criminal and administrative penalties for activities considered detrimental to the environment. Article 225 (1) provides that "in order to ensure that this right is effectively available, it is incumbent on the Government to:

I. Preserve and restore essential ecological processes and arrange for the ecological management of species and ecosystems;

II. Preserve the diversity and integrity of the genetic patrimony of Brazil and oversee the activities of entities engaged in research and manipulation of genetic material,

III. Define, in all units of the Federation, the geographical areas and components thereof that are to be specially protected (these decisions may be amended or repealed only by the legislature and any use that compromises the integrity of the features which justify protection of such areas shall be prohibited);

IV. Require, pursuant to the law, an environmental impact study to be made prior to the installation of a project or activity liable to cause significant harm to the environment, and the results of such study to be made public.

V. Monitor the development, marketing and use of techniques, methods and substances that present a risk to life, the quality of life or the environment;

VI. Promote environmental education at all levels of instruction, and help to increase public awareness of the need to preserve the environment;

VII. Protect the flora and fauna; practices which put their ecological function at risk, lead to the extinction of species or subject animals to cruel treatment are hereby prohibited."

Certain areas are specially protected and the rights of indigenous populations, particularly their rights over the lands they traditionally occupy, are recognized by the Constitution (art. 23).

10. Bulgaria

The 1991 Constitution provides that "Bulgaria shall ensure the protection and conservation of the environment, the sustenance of animals and the maintenance of their diversity, and the rational use of ... natural ... resources", and that while "citizens have the right to a healthy and favourable environment ... they [also] have an obligation to protect the environment" (chap. II, art. 31).

11. Burkina Faso

The 1991 Constitution provides for "the right to a healthy environment" and stipulates that "the protection, defence and promotion of the environment shall be the duty of all" (title I, arts. 30 and 31).

12. Chile

The 1980 Constitution guarantees everyone "the right to live in an environment free from contamination. It is the duty of the State to watch over the protection of this right and the preservation of the environment" (art. 19 (8)). An appeal may be lodged to ensure observance of these provisions.

13. China

The 1982 Constitution stipulates that "the State shall protect and improve the living environment and the ecological environment, and prevent and remedy pollution and other public hazards". It also ensures the rational use of natural resources and protects rare animals and plants (chap. I, arts. 9 and 26).

14. Colombia

The 1991 Constitution obliges the government authorities and the people to protect the cultural and natural assets of the nation. It establishes a link between public health and protection of the environment (arts. 8, 49, 79, 80, 86 and 88).

15. Korea

The 1987 Constitution proclaims that "All citizens have the right to a healthy and pleasant environment. The State and all citizens shall endeavour to protect the environment" (chap. II, art. 35).

16. Cuba

The amended 1992 Constitution provides, in essence, that the State shall protect the environment and the country's natural resources, over which it shall exercise sovereignty. The State also recognizes the close link between the environment and sustainable economic and social development, which ensures the survival, well-being and security of present and future generations. Citizens also have a duty to contribute to the protection of nature's rich potential (arts. 11 (b) and 27).

17. El Salvador

The 1983 Constitution stipulates that "The State shall maintain permanent control over the quality of pharmaceutical, chemical and food products and over ... atmospheric conditions which may affect health and well-being" (chap. 1, art. 69).

18. United Arab Emirates

The 1971 Constitution proclaims that "The natural resources and wealth of each Emirate shall be considered the public property of that Emirate. Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy" (chap. 2, art. 23).

19. Ecuador

The 1983 Constitution guarantees the right to live in an environment free of contamination (title II, sect. 1, art. 19 (2)).

20. Spain

The 1978 Constitution accords everyone "the right to enjoy an environment suitable for the development of the person" and imposes on them "the duty to preserve it". In addition "The public authorities shall concern themselves with the rational use of all natural resources". Any one violating these provisions is liable to criminal or administrative sanctions (chap. III, art. 45).

21. Ethiopia

The 1987 Constitution guarantees maintenance of the ecological balance and rational distribution of human settlements "in order to create favourable conditions for development" (part II, arts. 10 and 55).

22. Russian Federation

The 1993 Constitution stipulates that "Every person has an obligation to protect nature, preserve its wealth and improve the environment" (art. 58). Damage to the environment is punishable by law and may be subject to compensation. The protection and rational use of natural resources constitute a further established principle (art. 49).

23. Greece

The 1975 Constitution provides that the protection of the natural and cultural environment is a duty of the State (art. 24).

24. Guatemala

The 1985 Constitution promotes social, economic and technological development which will prevent pollution of the environment and maintain the ecological balance (chap. II, sect. IV, art. 97).

25. Equatorial Guinea

The 1982 Constitution stipulates that the State recognizes the right to the protection of health (title VI, chap. II, art. 60).

26. Guyana

The 1980 Constitution obliges every citizen to participate in activities to improve the environment and protect the health of the nation. In addition, the interests of present and future generations are taken into account, and the use of natural resources must be rational (arts. 25 and 36).

27. Haiti

The 1987 Constitution imposes on citizens the civic duty "to respect and protect the environment". "Practices that are liable to disturb the ecological balance are strictly prohibited", as is the importation of "wastes or residues ... from foreign sources" (title XI, chap. II, arts. 253 and 258).

28. Honduras

The 1982 Constitution stipulates that "the State shall maintain a satisfactory environment for the protection of the health of all" (chap. VII, art. 145).

29. Hungary

The revised Constitution of 1990 "recognizes and enforces the right of everyone to a healthy environment". Physical and mental health, safety in the workplace and the provision of medical care are further rights recognized by the Constitution (chap. I, sect. 18, and chap. XII, sect. 70/D).

30. India

The 1977 Constitution, as amended in 1985, provides that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife" and makes it the duty of every citizen "to protect and improve the natural environment" (part IV, arts. 48 A and 51 A).

31. Islamic Republic of Iran

The 1980 Constitution institutes the protection of the environment in which the present and future generations must live as a public responsibility. Economic or other activities which pollute the environment are prohibited (chap. IV, art. 50).

32. Malta

The 1964 Constitution stipulates that "The State shall safeguard the landscape and the historical and artistic patrimony of the Nation" (chap. II, art. 9).

33. Mexico

The 1917 Constitution, as amended in 1987, provides that the State shall have the right to regulate the use of natural resources which are susceptible of appropriation, in order to ensure a more equitable distribution of public wealth, to achieve well-balanced development and to improve the living conditions of the urban and rural population. A link is established between the preservation of the ecological balance, human settlements and the protection of natural resources (art. 27).

34. Mongolia

The 1992 Constitution recognizes the various components of the ecosystem as subject to national sovereignty and hence State protection (chap. I, art. 6). It also recognizes the right of citizens to a healthy and safe environment, the right to be protected against environmental pollution and ecological imbalances, and the right to seek legal redress for violations of those rights. It also imposes on citizens the duty to protect nature and the environment (chap. II, arts. 16 and 17).

35. Mozambique

The 1990 Constitution provides that "The State shall promote efforts to guarantee the ecological balance and the preservation of the environment for the betterment of the quality of life of its citizens" (chap. IV, art. 37).

36. Namibia

The 1990 Constitution, with a view to promoting the welfare of the people, stipulates that the State shall maintain ecosystems, essential ecological processes and biological diversity. Protection of the interests of present and future generations and measures against dumping or recycling of foreign nuclear and toxic waste are other responsibilities of the State (chap. II, art. 95).

37. Nepal

The 1990 Constitution defines as State priorities the protection of the environment throughout the country, the prevention of damage to the environment and enhancing the consciousness of the public regarding environmental cleanliness (art. 26).

38. Nicaragua

Under the 1987 Constitution, Nicaraguans have the right to live in a healthy environment, which the State has the duty to preserve, develop and restore. The same is true of natural resources, which form part of the national heritage and must be exploited in a rational way (title IV, chap. III, art. 60 and title VI, chap. I, art. 102)

39. Nigeria

The 1979 Constitution stipulates that "exploitation of human or natural resources for reasons other than the good of the community shall be prohibited" (chap. II, art. 18).

40. Panama

The 1980 Constitution provides that "It is a fundamental duty of the State to see to the preservation of ecological conditions and to prevent pollution of the environment and imbalance in ecosystems, with a view to ensuring economic and social development" (chap. VI, art. 110).

41. Papua New Guinea

The 1984 Constitution defines the fourth goal of the State as the conservation of the environment and the rational use of natural resources "for the benefit of future generations". In this respect, all persons have the basic obligation to "protect [the country] and to safeguard the national wealth, resources and environment" (chap. IV).

42. Paraguay

The 1967 Constitution provides that "The State shall conserve the forestry resources of the country, as well as other renewable natural resources" (chap. VI, art. 132).

43. Netherlands

The 1989 Constitution accords priority to any action by the State to promote the "distribution of wealth", regional planning, and the protection and improvement of the environment (art. 20).

44. Peru

The 1979 Constitution provides that "Everyone has the right to live in a healthy environment" and that "It is the obligation of the State to prevent and control environmental pollution". It also recognizes that natural resources are the patrimony of the nation (chap. II, arts. 118 and 123).

45. Philippines

The 1986 Constitution protects exclusively the country's marine wealth and the rights of its fishermen (art. XII, sects. 2 and 7).

46. Poland

The 1989 Constitution provides that citizens have the right to a natural environment and the duty to protect it (chap. VIII, art. 71).

47. Portugal

The 1982 Constitution provides that "Everyone shall have the right to a healthy and ecologically balanced human environment and the duty to defend it". The State also has the duty to protect the environment, and the Constitution identifies the measures to be taken to that end (part I, title III, chap. II, art. 66).

48. Lao People's Democratic Republic

The 1991 Constitution imposes on all organizations and all citizens the duty to protect the environment and natural resources (chap. II, art. 17).

49. Romania

Article 22 of the 1991 Constitution (see E/CN.4/Sub.2/1992/7), which was contained in the draft constitution, does not appear in the Constitution in the form in which it was adopted.

50. Seychelles

The 1992 Constitution (Preparation and Promulgation) Act states that "The State pledges itself to protect, preserve and improve the environment and natural resources", and that it is the duty of every citizen to do likewise (chap. IV, arts. 40 and 41).

51. Slovakia

The 1992 Constitution accords everyone the right to a favourable environment and imposes the obligation to protect and promote the environment and cultural heritage. It also recognizes the right of everyone to "timely and complete information about the state of the living environment and about the causes and effects of this state" (chap. II, arts. 44 and 45).

52. Slovenia

The 1991 Constitution provides that "All persons have the right to a healthy living environment in accordance with the law" and that "The State shall ensure a healthy living environment". It further provides that "All persons are required ... to protect natural points of interest and cultural monuments" (title III, arts. 72 and 73).

53. Sri Lanka

The 1977 Constitution stipulates that "The State shall protect, preserve and improve the environment for the benefit of the community" and makes it the duty of every person "to protect nature and conserve its riches" (chap. VI, arts. 27 and 28).

54. Sweden

The 1975 Constitution, as amended in 1978, provides that "it shall be incumbent on the community to guarantee the right to work, housing and education, and to promote social care and security, as well as a favourable living environment" (chap. I, art. 2, para. 2).

55. Taiwan

The 1947 Constitution provides that the State shall foster, inter alia, the development of "water conservancy" and "public health", and "protect the land and ... assist in its development" (chap. XIII, sect. 6, art. 169).

56. Tanzania

The 1984 Constitution calls for guarantees that natural resources will be preserved, developed and used for the benefit of all citizens. It also provides that "everyone has the responsibility of conserving natural resources" (sect. 2, paras. 9.1 and 27.1).

57. Chad

Under the 1989 Constitution, one of the fundamental responsibilities of the State is "to preserve the environment and natural resources" (art. 1).

58. Thailand

The 1978 Constitution stipulates that "The State shall preserve the environmental balance and eliminate pollution, which jeopardizes the health and hygiene of the people", and "shall have an appropriate demographic policy" (chap. V, arts. 65 and 69).

59. Turkey

The 1982 Constitution stipulates that "Every person has the right to live in a healthy, balanced environment." It is the duty of the State to protect the environment (chap. VIII, sect. A, art. 56).

60. Vanuatu

The 1980 Constitution stipulates that every person has the duty "to protect (Vanuatu) and to safeguard the national wealth, resources and the environment in the interests of the present generation and future generations" (title II, chap. II, art. 7).

61. Viet Nam

The 1980 Constitution provides that all the wealth and natural resources of the State are the property of the people and that everyone has the duty to protect and improve the environment (chap. 2, arts. 19, 20 and 36).

B. National legislation

In her earlier progress reports, the Special Rapporteur cited provisions of national legislation on the environment. Other examples received after publication of those reports are set out below.

1. Germany

A joint Bundestag-Bundesrat Committee on the Constitution has recommended that environmental protection be incorporated in the Basic Law as a national objective. The new clause reads as follows: "For the sake of present and future generations, the State shall protect the natural sources of life within the framework of the constitutional order through the Legislature and, in accordance with the law and the principles of justice, the executive and the judiciary".

2. Egypt

The Government of Egypt has informed the Special Rapporteur of the promulgation of Act No. 4/1994, on the environment, as part of the national effort to ensure exercise of the right to a healthy environment. The Act establishes the rules for protection of the atmosphere and marine and land environments, governs the operation of environment monitoring bodies and defines their functions in the context of coordination. It also embodies the principle of compensation of individuals and corporate entities for damage caused by pollution.

3. United States of America

In a communication addressed to the Special Rapporteur, the Government of the United States of America states that: "the U.S. considers human rights and environmental preservation to be two of the highest priorities of this Government. On 11 February 1994, President Clinton issued an Executive Order to the heads of all departments and agencies of the U.S. Government on the subject: 'Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'. The purpose of this Executive Order was to underscore certain provisions of existing U.S. laws that can help ensure that all communities in the United States of America live in a safe and healthful environment".

4. Greenland

Greenland has embarked on a national and regional process for the protection of indigenous populations in the Arctic with a view to ensuring sustainable development for them.

5. Islamic Republic of Iran

Section 1 of the Environment Protection and Enhancement Act of 1974 stipulates that "None of the restrictions and regulations to be established in respect of the areas and regions mentioned in section 5 (a) hereof shall conflict with the ownership right and usufruct exercised legally by individuals within such areas and regions". Section 11 also provides that

"Considering the requirements and criteria established under the regulations referred to in section 10 hereof, the Department shall distinguish such factories and workshops that contribute to the pollution of the environment, and shall give the owners or managers thereof notice either to do away with the causes of the pollution within a definite period of time or to discontinue operation [...]. In the event that any person concerned should object to such notice he may lodge a complaint with the local court of first instance [...]."

7. Nepal

Following the United Nations Conference on Environment and Development, the Government of Nepal implemented numerous measures for the protection of the environment. In 1993, the Government adopted the "National Environmental Impact Assessment Guidelines" as part of a general policy to promote an integrated approach to the environment and development.

8. Romania

Draft legislation on the protection of the environment provides that the State recognizes the right of everyone to a healthy environment. It sets out a list of measures to be taken by the State to ensure the effective enjoyment of this right.

C. Summary of new domestic cases

For those previously analysed by the Special Rapporteur, please see documents E/CN.4/Sub.2/1992/7 and E/CN.4/Sub.2/1993/7.

1. Canada

In Regina v. Sparrow, the Canadian Supreme Court recognized the existence of aboriginal rights and delineated a test to determine whether there had been a prima facie infringement of those rights. The appellant, a member of the Musqueam Band, was charged with fishing with a drift net longer than that permitted by his Band's food fishing licence. The Court held that the Constitution Act, 1982 § 35 (1), which recognizes and affirms existing aboriginal rights, requires that any regulation infringing upon indigenous rights must be justified by a valid objective consistent with the Government's fiduciary duty toward the aboriginal peoples. Parties challenging legislation as a prima facie infringement of indigenous rights must show: (i) that the limitation is unreasonable; (ii) that the regulation imposes an undue burden; and (iii) that it denies the holders their preferred means of exercising that right. The Court found the Government's public interest objective to be so vague as to provide no meaningful guidance and so broad as to be unworkable. It allowed the objective of conservation and resource management, however, as consistent with aboriginal beliefs, practices and rights. If on remand it was found that there had been an infringement, indigenous groups would enjoy priority allocation over other commercial and consumer groups after legitimate conservation needs had been met.

2. Costa Rica

The Supreme Court of Costa Rica affirmed the right to a healthy environment (Constitutional Chamber of the Supreme Court Vote No. 3705, 30 July 1993). The plaintiff brought the action on the grounds that his and his neighbours' rights to life and a healthy environment had been violated because a cliff in their neighbourhood had been used as a dump. The Ministry of Health submitted that he had issued an order to buy lots for an alternative dump site within three months. The Court ordered that the dump be closed immediately and held that the authorities had not been effective or diligent enough in carrying out their obligation to protect life, health and the environment. To this effect, the Court quoted the decision of the lower court which asserted that life "is only possible when it exists in solidarity with nature, which nourishes and sustains us - not only with regard to physical food, but also with physical well-being. It constitutes a right which all citizens possess to live in an environment free from contamination. This is the basis of a just and productive society."

3. Mexico

Decision 12/91 of the Council of the National Commission for Human Rights assigns to the Commission responsibility for dealing with complaints on ecological matters. In this connection, the Commission has drawn up a programme on human rights, ecology and health. In 1991 and 1992, the Commission made six recommendations on the environment. Recommendation 110/91 of 6 November 1991, for example, was in response to a complaint lodged by individuals that the authorities responsible for controlling and eliminating pollution had failed to keep the public informed. The Commission recommended that the authorities concerned should publicize widely through the media the harmful effects of environmental degradation on health and the specific measures which the public should take. Recommendation 101/92 of 22 May 1992 was in response to a complaint by the residents of the Nicolás Bravo and Guadalupe Hidalgo de Tehuacón housing developments regarding irregularities in the operation of enterprises in the area. The Commission recommended that an investigation should be conducted into the standing of those enterprises with regard to the law. The Government of Mexico has also informed the Special Rapporteur of the establishment of the National Ecological Institute and the Office of the Federal Advocate for Protection of the Environment under Decision 4/92 of the Council of the National Commission for Human Rights.

4. Philippines

The Philippines Supreme Court recently affirmed the right of this and future generations to a balanced and healthy ecology (Minors Oposas v. Secretary of the Department of Environment and Natural Resources (DENR), 33 ILM 173 (1994)). The plaintiffs in that case, a group of minors representing their generation as well as generations unborn, sought to have all existing timber licences cancelled due to the advanced rate of deforestation in the Philippines and its destructive effects on the environment, indigenous cultures and "inter-generational equity". The Supreme Court reversed the dismissal of the case, ruling that they not only had standing to represent future generations, but had adequately asserted a right

to a balanced and healthful ecology based on the Constitution, Executive Order No. 192, title XIV, as well as natural law. "Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation ... the advancement of which may even be said to predate all Governments and constitutions." The Court further ruled that if the State did not carry out its "correlative duty to refrain from impairing the environment," the repercussions would not only be felt by this generation, but also those to come - "generations which stand to inherit nothing but parched earth incapable of sustaining life".